PART VII:

THE CONTEMPORARY TERRAIN OF MEDIA POLICY

STUDY 18:
THE CHALLENGE OF CONTEMPORARY COMMERCIAL MASS MEDIA ECONOMICS TO DEMOCRATIC DISCOURSE

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ABSTRACT

Competitive media market structures promote democratic discourse, although they may not meet all the needs of society for a democratic public sphere. Unfortunately, the contemporary commercial mass media have moved far from the competitive model, tending toward oligopoly and monopolistic competition.

- Economies of scale and strong differences in preferences between population groups drive the commercial mass media to serve larger groups in society and under-serve minorities.

- Market power provides media owners with the resources to pursue their political preferences with both economic power and the power of control over the press – setting policy, hiring staff.

Advertisers reinforce the tendency to narrow the focus of video content.

- The target preferred demographics and seeking to avoid controversy or content that might discomfort consumers.

- Commercialism overwhelms public interest and diverse content.

The severe tendency of the mainstream mass media to undervalue and under-serve minorities is well documented in the literature.

- Concentration results in less diversity.

- Diversity of ownership across geographic, ethnic and gender lines is correlated with diversity of programming.

- Minority owners are more likely to serve the needs of their communities.

INTRODUCTION

The legal discussion in Studies 1, 2, and 3 sets out the public policy issues by emphasizing the ways in which civic discourse transcends mere economics to include diversity and localism, both of which are vital to democratic discourse. The discussion of point of view, bias or slant, in Study 5 demonstrates the link between ownership and diversity. The discussion of bias arrives at the conclusion that competition is critical to promoting vibrant democratic discourse. This section takes the argument one step farther. It demonstrates why the economic characteristics of mass media production results in "market failure" at the start of the 21st century. In other words, the problem is not that 'good' economics makes for 'bad' civic discourse. In fact, vigorous, atomistic competition is generally considered supportive of democracy, although not, in itself sufficient to deliver the media democracy needs, as discussed in Study 3. The problem is that the structural tendencies of contemporary media markets make for 'bad' economics that reinforce the tendency of failure in the forum for democratic discourse. The tendency of ownership structures to deviate from competitive markets is an economic problem that becomes a challenge for democratic discourse because owners can combine economic influence with their privileged position in the forum for democratic discourse to exercise undue influence over public opinion to the detriment of citizens and democratic discourse.

COMPETITION AND DEMOCRACY

Economists stress that vigorously competitive markets are compatible with democratic processes. There are political reasons to prefer atomistically competitive markets. Scherer and Ross, among the most prominent analysts of industrial organization, note that analysis should begin with the political implications of economic institutions.[534] Specifically, they ask, “Why is a competitive market system held in such high esteem by statesmen and economists alike? Why is competition the ideal in a market economy, and what is wrong with monopoly?” They provide a series of answers, starting from the decentralized, objective processes that typify atomistically competitive markets that check the power of large entities.

> One of the most important arguments is that the atomistic structure of buyers and sellers required for competition decentralizes and disperses power. The resource allocation and income distribution problem is solved through the almost mechanical interaction of supply and demand forces on the market, and not through the conscious exercise of power held in private hands (for example, under monopoly) or government hands (that is, under state enterprise or government regulation). Limiting the power of both government bodies and private individuals to make decisions that shape people’s lives and fortunes was a fundamental goal of the men who wrote the U.S. Constitution.[535]

Other economic characteristics of atomistically competitive markets that converge with democratic principles are the autonomy and freedom of entry that such markets imply.

> A closely related benefit is the fact that competitive market processes solve the economic problem *impersonally*, and not through the personal control of entrepreneurs and bureaucrats…
>
> [Another] political merit of a competitive market is its freedom of opportunity. When the no-barriers-to-entry condition of perfect competition is satisfied, individuals are free to choose whatever trade or profession they prefer, limited only by their own talent and skill and by their ability to raise the (presumably modest) amount of capital required.[536]

Thus, atomistic competition promotes individualistic, impersonal decisions with freedom of opportunity and relatively low resource requirements for entry. These are ideal

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[534] Scherer, F. Michael and David Ross. *Industrial Market Structure and Economic Performance.* New York: Houghton Mifflin Company, 1990, p. 18: “We begin with the political arguments, not merely because they are sufficiently transparent to be treated briefly, but also because when all is said and done, they, and not the economists’ abstruse models, have tipped the balance of social consensus toward competition.”

[535] Id., p. 18.
[536] Id., p. 18.

for populist forms of democracy.[537] Lawrence Lessig points out that at the time of the framing of the Constitution the press had a very atomistic character.

> The "press" in 1791 was not the *New York Times* or the *Wall Street Journal*. It did not comprise large organizations of private interests, with millions of readers associated with each organization. Rather, the press then was much like the Internet today. The cost of a printing press was low, the readership was slight, and anyone (within reason) could become a publisher – and in fact an extraordinary number did.[538]

The problem in contemporary mass media markets is that they have moved quite far from the competitive form of organization. In fact, the pursuit of efficiency through economies of scale and network effects has pushed many contemporary industries toward oligopoly or monopoly. This is a source of concern and requires vigilant solutions in all commercial markets. Efficiency that results from large economies of scale also leads to small numbers of competitors and can degenerate into inefficient abuse of monopoly power.[539] In media markets, where the impact reverberates so powerfully in the forum for democratic discourse, these tendencies must be prevented from imposing the graver condition of distorting civic discourse.

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[537] Lessig, Lawrence. *Code and Other Laws of Cyberspace.* New York: Basic Books, 1999, pp. 166-167: "Relative anonymity, decentralized distribution, multiple points of access, no necessary tie to geography, no simple system to identify content, tools of encryption – all these features and consequences of the Internet protocol make it difficult to control speech in cyberspace. The architecture of cyberspace is the real protector of speech there; it is the real "First Amendment in cyberspace," and this First Amendment is no local ordinance… "The architecture of the Internet, as it is right now, is perhaps the most important model of free speech since the founding. This model has implications far beyond e-mail and web pages."

[538] Lessig, 1999, p. 183.

[539] Cooper, Mark N. 2001. "Antitrust as Consumer Protection in the New Economy: Lessons from the Microsoft Case." *Hasting Law Journal* 52, April.

MARKET FAILURE IN MEDIA MARKETS

It has long been recognized that the contemporary technologies and the cost structure of commercial mass media production are not conducive to vigorous, atomistic competition. Print and broadcast media have unique economic characteristics.[540] To the extent that economics is a consideration, economic competition in commercial mass media markets cannot assure diversity and antagonism.[541] The conceptual underpinnings of the argument are well known to media market analysts.[542] On the supply-side, media markets exhibit high first copy costs or high fixed costs.[543] On the demand-side, media market products are in some important respects non-substitutable or exhibit strong group-specific preferences.[544]

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[540] Berry, Steven T. and Joel Waldfogel. 1999. Public Radio in the United States: Does it Correct Market Failure or Cannibalize Commercial Stations? *Journal of Public Economics* 71, point out free entry may not accomplish the economic goals set out for it either. There is evidence of the anticompetitive behaviors expected to be associated with reductions in competition, such as price increases and excess profits. Wirth, M. O. 1984. "The Effects of Market Structure on Television News Pricing." *Journal of Broadcasting* 28: 215-24; Simon, J., W. J. Primeaux and E. Rice. 1986. "The Price Effects of Monopoly Ownership in Newspapers." *Antitrust Bulletin* Spring; Rubinovitz, R. 1991. "Market Power and Price Increases for Basic Cable Service Since Deregulation." *Economic Analysis Regulatory Group, Department of Justice*, 6 August 1991 Bates, B. J. 1993. "Station Trafficking in Radio: The Impact of Deregulation." *Journal of Broadcasting and Electronic Media* 37:1: 21-30.

[541] Ray, W. B. *FCC: The Ups and Downs of Radio-TV Regulation.* Iowa: Iowa State University Press, 1990; Wat W. 1996. "The Supreme Court Defines the Forum for Democratic Discourse." *Journalism and Mass Communications Quarterly* Spring; Firestone, C. M. and J. M. Schement. *Toward an Information Bill of Rights and Responsibilities*. Washington, DC: Aspen Institute, 1995 Brown, Duncan H. 1994. "The Academy's Response to the Call for a Marketplace Approach to Broadcast Regulation." *Critical Studies in Mass Communications* 11*:* 254 Benkler, Yochai. 1999. "Free as the Air." *New York University Law Review* 74.

[542] Baker, C. Edwin. *Media, Markets and Democracy*. Cambridge: Cambridge University Press, 2001, p. 42.

[543] Waldfogel, Joel and Lisa George. "Who Benefits Whom in Daily Newspaper Market." *NBER Working Paper 7994*. Cambridge: National Bureau of Economic Research, 2000 (hereafter Waldfogel, Television), p. 1. Other papers in the series of studies of "preference externalities" were made a part of the record in conjunction with Joel *Waldfogel's* appearance at the FCC Roundtable, including, 1999. "Preference Externalities: An

The "welfare" effect of these characteristics is to cause the market to fail to meet the information needs of some groups in society. This results because groups express strong preferences for specific types of programming or content. Programming that is targeted at whites is not highly substitutable for programming that is targeted at blacks, from the point of view of blacks. If fixed costs and group preferences are strong, producers must decide at whom to target their content. Given the profit maximizing incentive to recover the high costs from the larger audience, they target the majority or, in a more fragmented market the plurality. The minorities are less well served.

As articulated and empirically demonstrated by Joel Waldfogel, this might be termed an economic theory of discrimination "because it gives a non-discriminatory reason why markets will deliver fewer products – and, one might infer, lower utility – to 'preference minorities,' small groups of individuals with atypical preferences."[545] Discrimination results not from biases or psychological factors, but from impersonal economic processes.

> A consumer with atypical tastes will face less product variety than one with common tastes…. The market delivers fewer products – and less associated satisfaction – to these groups simply because they are small. This phenomenon can arise even if radio firms are national and entirely non-discriminatory.

Empirical Study of Who Benefits Whom in Differentiated Product Markets." *NBER Working Paper 7391* Cambridge: National Bureau of Economic Research; Siegelman, Peter. "Race and Radio: Preference Externalities, Minority Ownership and the Provision of Programming to Minorities" *Advances in Applied Microeconomics 10*; Oberholzer-Gee, Felix and Joel Waldfogel. Electoral Acceleration: The Effect of Minority Population on Minority Voter Turnout. *NBER Working Paper 8252*. Cambridge, MA: National Bureau of Economic Research, 2001; George, Lisa and Joel Waldfogel. Who Benefits Whom in Daily Newspaper Markets? *NBER Working Paper 7944*. Cambridge, MA: National Bureau of Economic Research, 2000; as well as the statement Federal Communications Commission. *Comments on Consolidation and Localism*. Roundtable on Media Ownership, 29 October 2001 [hereafter, Localism); Oberholzer-Gee, Felix and Joel Waldfogel. "Tiebout Acceleration: Political Participation in Heterogeneous Jurisdictions." *University of Pennsylvania, August 2000* (hereafter Participation).

[544] Baker, 2001, p. 43.

[545] Waldfogel, 1999, pp. 27-30.

> The fundamental conditions needed to produce compartmentalized preference externalities are large fixed costs and preferences that differ sharply across groups of consumers. These conditions are likely to hold, to greater or lesser extents, in a variety of media markets – newspapers, magazines, television, and movies.[546]

This poses a fundamental challenge to the validity of the assumption that markets allocate resources efficiently.

> Friedman has eloquently argued that markets avoid the tyrannies of the majority endemic to allocation through collective choice. Mounting evidence that minority consumer welfare depends on local minority population in local media markets indicates that, for this industry at least, the difference between market and collective choice allocation is a matter of degree, not kind. It is important to understand the relationship between market demographic composition and the targeting of programming content because related research documents a relationship between the presence of black-targeted media and the tendency for blacks to vote.[547]

UNDER SERVING MINORITY POINTS OF VIEW

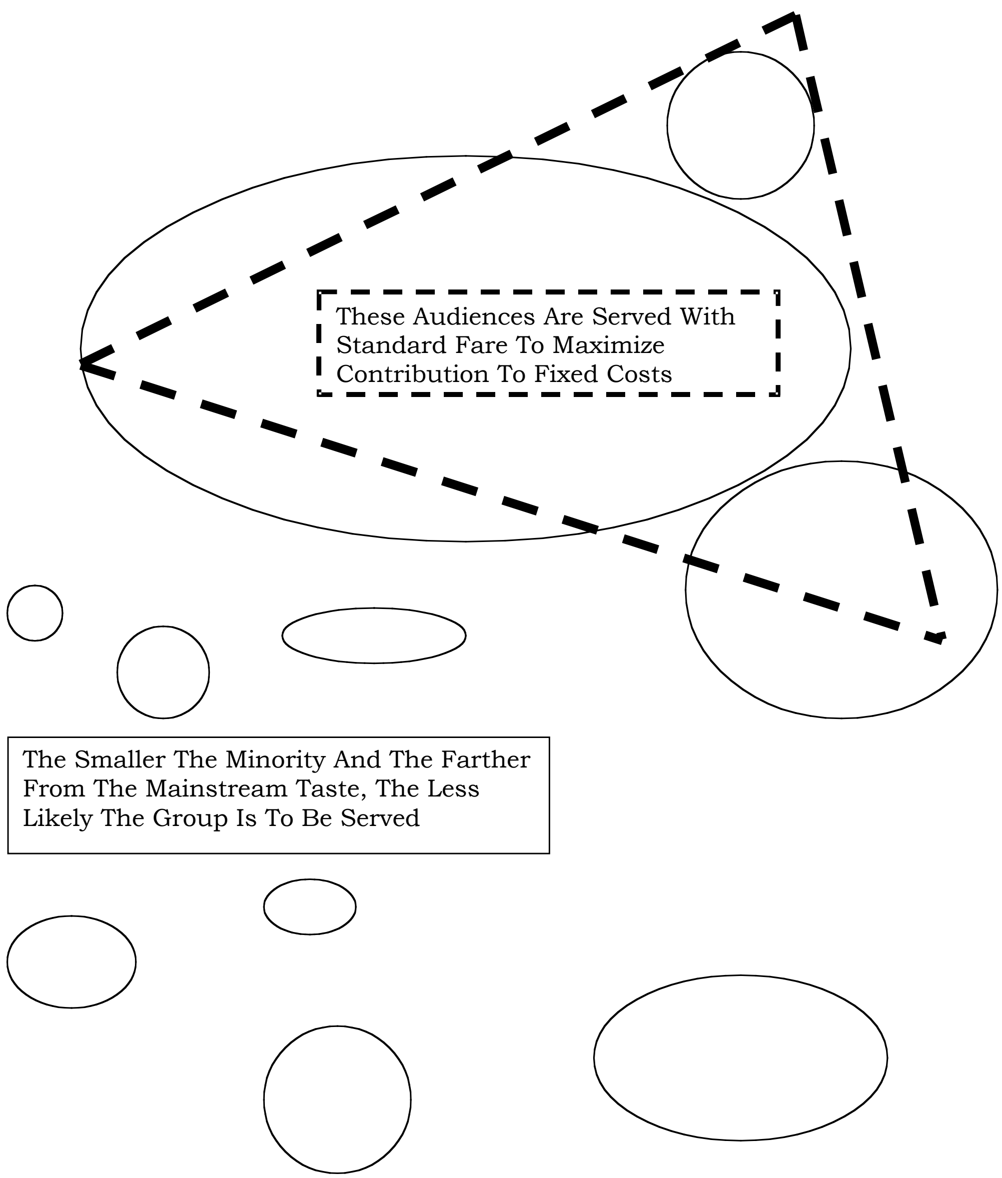
Exhibit 1 shows graphically how this tyranny works in media markets. When there are large fixed costs, a limited ability to cover the market and strong differences in preference for programming, profit maximizers serve the core audience and neglect smaller preference minorities. The larger the minority group and the closer its taste to the majority, the more likely it is to be served.

The tyranny of the majority in media markets is linked to the tyranny of the majority in politics because the media are the means of political communication.

> We present evidence that electoral competition leads candidates to propose policies that are supported by proportionately larger groups and that members of these groups are more likely to turn out if they find the proposed policies more appealing. In addition, we show that candidates find it easier to direct

[546] Waldfogel, 1999, pp. 27-30.
[547] Waldfogel, 2001, p. 3; Baker, 2001, p. 80.

Exhibit 1:
Conceptualizing the Tyranny of the Majority in Media Markets



> campaign efforts at larger groups because many existing media outlets cater to this audience…
>
> Channels of communication that are used to disseminate political information rarely exist for the sole purpose of informing potential voters. The number of channels that candidates have at their disposal reflects the cost structure of printing newspapers, establishing radio stations, and founding political groups. To the extent that these activities carry fixed costs, channels that cater to small groups are less likely to exist. The welfare implications – if one views the decision to vote as the decision to "consume" an election — are analogous to those of differentiated markets with fixed costs.[548]

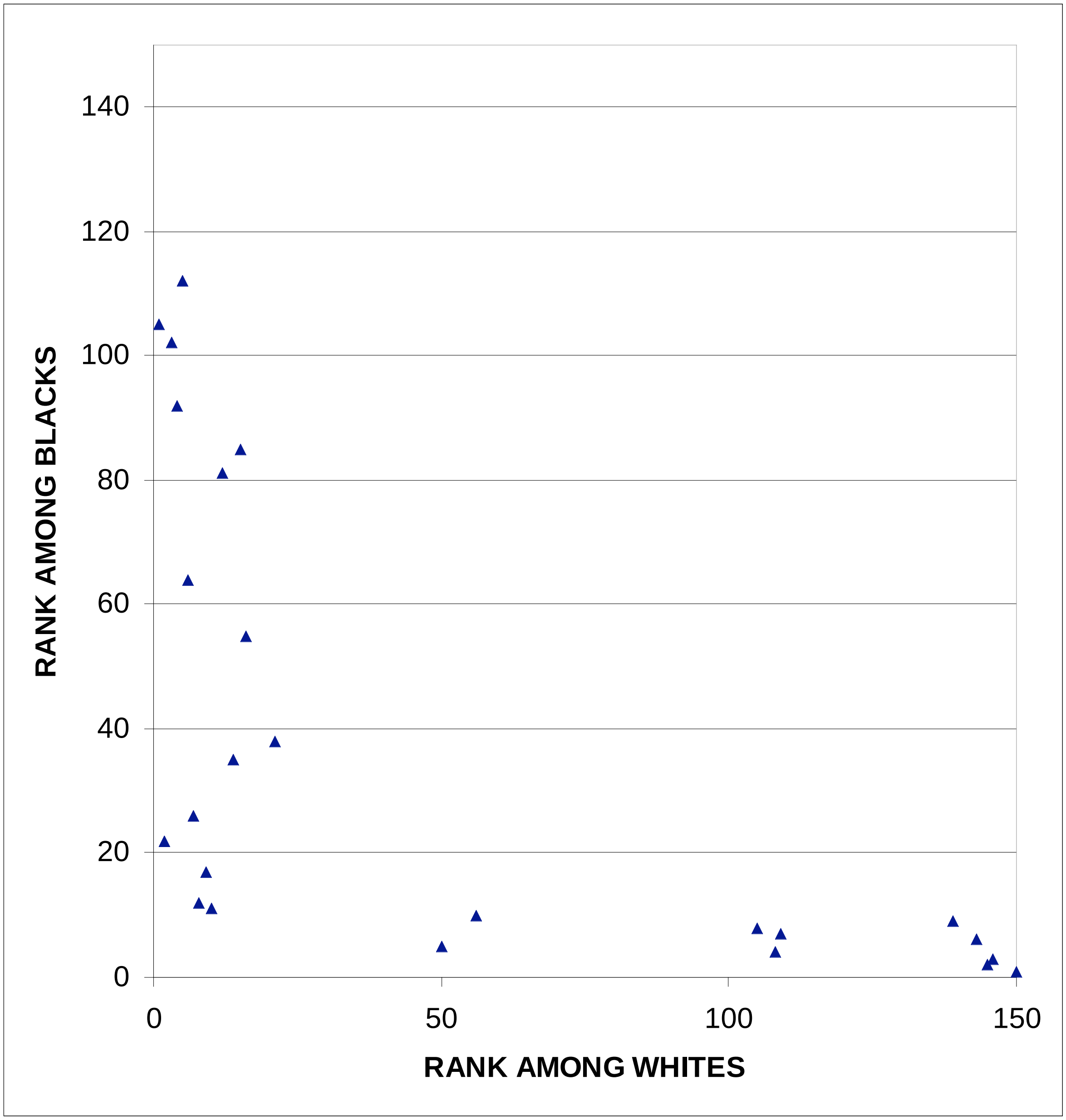
Exhibit 2 demonstrates the strong differences between blacks and whites in their preferences for programming. Similarly, preferences differ sharply across groups defined by gender, age, race and ethnicity (Hispanic). The Figure shows the ranking among whites and blacks of the top ten shows viewed by whites, the top ten shows viewed by blacks, and the six news shows ranked in the top twenty among whites. In all, we have 25 shows, fifteen that are highly ranked among whites and fourteen that are highly ranked among blacks. There is little overlap between the two groups.

The easiest way to appreciate the difference is to note that nine of the top ten ranked shows among blacks do not even rank in the top fifty among whites. The most popular fifteen shows among whites have an average ranking of 57 among blacks. The top ten shows among blacks have an average ranking of 85 among whites. The difference in preference for the popular news shows is similar. The average ranking for the six news shows analyzed among whites was fourteen; among blacks it was 53.

The tendency to under serve minority points of view springs in part from the role of advertising in the media.[549] Advertising as a determinant of demand introduces a substantial

[548] Oberholzer-Gee and Waldfogel, 2001b, pp. 36-37.
[549] Waldfogel, 2001, p. 1.

EXHIBIT 2:
Most Popular TV Shows Differ Between White And Black Audiences



Source: Goldberg, Bernard. *Bias.* Washington: Regnery, 2002, pp. 150, 155.

disconnect between what consumers want and what the market produces.[550] First, to a significant extent, because advertisers account for such a large share of the revenue of the mass media, the market produces what advertisers want as much as, if not more than, what consumers want. Second, because advertising in particular, and the media in general, revolves around influencing people's choices, there is a sense in which the industry creates its own demand.[551] The tendency to avoid controversy and seek a lowest common denominator is augmented by the presence of advertisers, expressing their preferences in the market.

The failure of commercial mass media to meet the needs of citizens is nowhere more evident than in minority communities. Waldfogel has presented strong evidence of a kind of a tyranny of the majority in a number of media markets. These findings have been reinforced by recent findings of other scholars, as a 2002 article in the *Journal of Broadcasting and Electronic Media* makes clear.[552]

> The analyses presented here represent the next step forward in determining the extent to which advertiser valuations of minority audiences affect the viability of minority-owned and minority-targeted media outlets. The results conform to those of previous studies, which found that minority audiences are more difficult to monetize than non-minority audiences…[553]

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[550] Baker, 2001; Baker, C. Edwin. *Advertising and a Democratic Press.* Princeton: Princeton University Press, 1994. Krotoszynski, Ronald J., Jr. and A. Richard M. Blaiklock, 2000. Enhancing the Spectrum: Media Power, Democracy, and the Marketplace of Ideas. *University of Illinois Law Review*, p. 831: "The larger the audience the station generates, the higher the station's potential advertising revenues. Broadcasters, therefore, attempt to find and air programming that will appeal to the largest possible audience. In doing so, broadcasters necessarily air programming that is likely to appeal to most people within the potential audience – that is they air programming that appeals to the majority culture's viewpoint."

[551] Sunstein, Cass. *Republic.com.* Princeton: Princeton University Press, 2001, pp. 108-109, discusses the implications for democracy.

[552] Napoli, Philip. 2002. "Audience Valuation and Minority Media: An Analysis of the Determinants of the Value of Radio Audiences." *Journal of Broadcasting and Electronic Media* 46: 180-181.

[553] The author notes agreement with Ofori, K. A. 1999. "When Being No. 1 is not Enough: The Impact of Advertising Practices on Minority-Owned and Minority-Targeted Broadcast

> Minority-targeted media content suffers from not only the potentially lower valuations of minority audiences but also from the fact that, by definition, it appeals to a small audience. Smaller audiences mean small revenues, particularly when the audience is not highly valued by advertisers…[554]
>
> Moreover, lower levels of audience size and value both exert downward pressures on the production budgets of minority content, which further undermines the ability of such content to compete and remain viable… The differential in production budgets may be enough for some minority audience members to find the majority content more appealing than the content targeted at their particular interest and concerns. Such defections further undermine the viability of minority-targeted content… The end result is lower levels of availability of minority-targeted content.[555]

A long tradition of more qualitative research also supports the conclusion that minority market segments are less well served.[556] Greater concentration results in less diversity of ownership. Diversity of ownership – across geographic, ethnic and gender lines – is correlated with diversity of programming.[557] Simply, minority owners are more likely to

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Stations." *Civil Rights Forum on Communications Policy,* Washington D.C; Webster, James G. and Patricia F. Phalen. *The Mass Audience: Rediscovering the Dominant Model.* New Jersey: Erlbaum, 1997; Baker, C. Edwin. *Advertising and a Democratic Press.* Princeton: Princeton University Press, 1994.

554 The author cites Owen, Bruce and Steven Wildman. *Video Economics.* Cambridge: Harvard University Press, 1992; Waldfogel, 1999.

555 Naplio, 2002, p. xx.

556 Hamilton, James T. *Channeling Violence: The Economic Market for Violent Television Programming.* Princeton: Princeton University Press, 1998; Wildman, Steven. 1994. "One-way Flows and the Economics of Audience Making." in James Entema and D. Charles Whitney (eds.), *Audiencemaking: How the Media Create the Audience.* Thousand Oaks, CA: Sage Publications, 1994; Wildman, Steven and Theomary Karamanis. "The Economics of Minority Programming." In Amy Garner (eds.), *Investing in Diversity: Advancing Opportunities for Minorities in Media.* Washington: Aspen Institute, 1998; and Owen and Wildman, 1992.

557 Fife, Marilyn D. *The Impact of Minority Ownership on Broadcast Program Content: A Case Study of WGPR-TV's Local News Content*. Washington: National Association of Broadcasters, 1979; Fife, Marilyn D. *The Impact of Minority Ownership on Broadcast Program Content: A Multi-Market Study*. Washington: National Association of Broadcasters, 1986; Congressional Research Service. *Minority Broadcast Station Ownership and Broadcast Programming: Is There a Nexus?* Washington: Library of Congress, 1988; Hart, Jr., T. A. 1988. "The Case for Minority Broadcast Ownership." *Gannett Center Journal*; Wimmer, K. A. 1988. "Deregulation and the Future of Pluralism in the Mass Media: The Prospects for Positive Policy Reform." *Mass Communications Review*; Gauger, Timothy G. 1989. "The

present minority-centric points of view[558] just as females are more likely to present female-centric points of view[559] in the speakers, formats and content they put forward. Study 12 documents the vast under-serving of minority audiences from the supply side and the link between a lack of minority ownership and concentration.

THE IMPACT OF MARKET FAILURE ON CIVIC DISCOURSE

The impact of the market structure of contemporary media markets and their failures is felt across the forum for democratic discourse. In particular, it results in owner influence,

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Constitutionality of the FCC's Use of Race and Sex in Granting Broadcast Licenses." *Northwestern Law Review*; Klieman, Howard. 1991. "Content Diversity and the FCC's Minority and Gender Licensing Policies." *Journal of Broadcasting and Electronic Media* 35: 411-429; Collins-Jarvis, Lori A. 1993. "Gender Representation in an Electronic City Hall: Female Adoption of Santa Monica's PEN System." *Journal of Broadcasting and Electronic Media* 37:1: 49-65; Lacy, Stephen, Mary Alice Shaver and Charles St. Cyr. 1996. The Effects of Public Ownership and Newspaper Competition on the Financial Performance of Newspaper Corporation: A Replication and Extension. *Journalism and Mass Communications Quarterly* Summer.

[558] Empirical studies demonstrating the link between minority presence in the media and minority-oriented programming include Fife, 1979; Fife, 1986; Congressional Research Service, 1988 ; Hart, 1988; Wimmer, 1988; Evans, Akousa Barthewell. 1990. "Are Minority Preferences Necessary? Another Look at the Radio Broadcasting Industry." *Yale Law and Policy Review* 8; Dubin, Jeff and Matthew L. Spitzer. 1995. Testing Minority Preferences in Broadcasting. *Southern California Law Review* 68; Bachen, Christine, Allen Hammond, Laurie Mason and Stephanie Craft. *Diversity of Programming in the Broadcast Spectrum: Is there a Link Between Owner Race or Ethnicity and News and Public Affairs Programming?* Santa Clara: Santa Clara University Press, 1999; Mason, Laurie, Christine M. Bachen and Stephanie L. Craft. 2001. Support for FCC Minority Ownership Policy: How Broadcast Station Owner Race or Ethnicity Affects News and Public Affairs Programming Diversity. *Communication Law & Policy* 6.

[559] A similar line of empirical research dealing with gender exists. See Lacy, Shaver and St. Cyr, 1996; Gauger, 1989; Klieman, 1991; Collins-Jarvis, 1993; Lauzen, Martha M. and David Dozier. 1999. Making a Difference in Prime Time: Women on Screen and Behind the Scenes in 1995-1996 Television Season. *Journal of Broadcasting and Electronic Media* Winter; O'Sullivan, Patrick B. *The Nexus Between Broadcast Licensing Gender Preferences and Programming Diversity: What Does the Social Scientific Evidence Say?* Santa Barbara: Department of Communication, U.C. Santa Barbara*, CA*, 2000.

erosion of checks, balances and other positive externalities of vigorous civic discourse and loss of local perspective.

Baker presents a lengthy discussion of the political implications of the monopolistic media market. The first point is that it results in market power, traditionally measured as excess profits.[560] For media markets, however, economic profits can be used (dissipated) in another important way. Media owners can use their market power to influence content or policy directly.

The weak competition allows owners to earn monopoly profits and to use monopoly rents to pursue their personal agendas. The claim that ownership of the media does not matter to the selection and presentation of content is not plausible.[561] Whatever their political preferences, media owners are in a uniquely powerful position to influence civic discourse.

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[560] Baker, 2001, pp. 43-44: "Monopolistic competition theory applies to media goods. They… characteristically manifest the 'public good' attribute of having declining average costs over the relevant range of their supply curves due to a significant portion of the product's cost being its 'first copy cost,' with additional copies having a low to zero cost. There are a number of important attributes of monopolistic competition that are relevant for policy analysis and that distinguish it from the standard model of so-called pure competition, the standard model that underwrites the belief that a properly working market leads inexorably to the best result (given the market's givens of existing market expressed preferences and the existing distribution of wealth). The first feature to note here is that in monopolistic competition often products prevail that do not have close, certainly not identical, substitutes. Second, this non-substitutability of the prevailing monopolistic product will allow reaping of potentially significant monopoly profits."

[561] Krotoszynski and Blaiklock, 2000, pp. 832…833: "The owners of a television or radio station possess a unique ability to influence the direction of public affairs through selective coverage of contemporary events and candidates for public office…. "To be sure, concentrations of political power present a more direct kind of threat to democracy than do concentrations of media power. That said it is possible to use media power as a means of channeling, if not controlling the flow of political power. The owners of a television or radio station have a unique opportunity to influence the outcomes of electoral contests – both by reporting on candidates favorably and unfavorably and through benign (or malign) neglect. Media exposure is like oxygen to candidates for political office, particularly at the federal level. If a television station pretends that a candidate does not exist, her chances of election are considerably reduced."

They can use both the economic resources made available by their market power (as can monopolists in any industry) and the unique role of the media to pursue those preferences.[562]

One set of behaviors that is particularly problematic involves undemocratic uses of media market power in pursuit of the private interests of owners through manipulation, co-optation and censorious behaviors.[563] This can undermine the watchdog role of the press or distort coverage of events, when it suits their interests. The chilling effect need not be conscious or overt. Powerful media owners tend to be very visible figures in their political and policy preferences. Employees and institutions instinctively toe the line and self-censor out of an instinct for self-preservation, which dampens antagonism in the media.[564] It need not be continuous to be effective, but can be exercised at critical moments – elections, policy votes in legislatures.

Even though this is not Waldfogel's central concern, when he looks at the question of ownership, he finds support for the view that ownership matters beyond "simple" economics. Waldfogel finds in his study of radio markets that "black owners enter in situations that white owners avoid."[565] He continues to consider possible explanations for this behavior and offers a hypothesis that relies on owner preferences,

> A second possibility is that black owners enter for "ideological" reasons, which means they are willing to forego some profits in order to provide a particular sort of programming. This hypothesis would rationalize the

[562] Baker, 2002, p. 43. Krotoszynski and Blaiklock, 2000, p. 875, put it as follows: "There is simply no reason to believe that someone like Ted Turner or Rupert Murdock will consistently seek to maximize economic returns rather than use media power to influence political events in ways he deems desirable."

[563] Baker, 2002, p. 73.

[564] Krotoszynski and Blaiklock, 2000, p. 867: "Employees are unlikely to criticize their employers, and this truism holds true for the fourth Estate."

[565] Siegelman, Peter, Joel Waldfogel. 2001. "Race and Radio: Preference Externalities, Minority Ownership and the Provision of Programming to Minorities" *Advances in Applied Microeconomics* 10, p. 23.

> observation that black-owned and targeted stations have fewer listeners, on average, than [sic] their white-owned counterparts (in markets with both white and black-owned, black-targeted stations). Black owners' willingness to accept smaller returns could explain why greater black ownership increases black-targeted programming: additional black owners are willing to enter low-profitability market niches (programming to small black audiences) that whites would not enter.[566]

Perhaps Waldfogel puts the word "ideology" in quotes to blunt its negative connotation. Baker presents the policy implications in terms that are familiar and relevant to the arena of diversity policy in civic discourse.

> Choice, not merely market forces, influences quality. Choice explains the variation both within and between ownership categories. Moreover, quality may provide some efficiencies and management qualities that sometimes increase the enterprise's potential for profits or quality. However, the incentives for executives (editors and publishers) in chain firms as well as the added pressures of public ownership are likely to be directed toward focusing on increasing profits. Possibly due to price of membership or involvement within a community that leads to dedication or desires to form status in that community, local ownership might be sociologically predicted to lead to greater commitment to and greater choice to serve values other than the bottom line.[567]

Baker argues that the experiences of civic discourse for minorities and the public at large are deeply affected by ownership. Large, monopolistic structures make it more difficult for opinion leaders within minority or niche communities to gain experience in the industry.[568] Baker links the need to have policies that promote viewpoint diversity to the tendency of the commercial media to under serve the less powerful in society.[569] In order for the media to meet the needs of these groups, it must inform and mobilize them.[570]

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566 Id., p. 25.
567 Baker, 2002, p. 47.
568 Id., pp. 67-68.
569 Baker, 2001, pp. 96-97: "Thus, from the perspective of providing people what they want, media markets are subject to the following criticisms. They provide much too much "bad" quality content – bad meaning content that has negative externalities. Media markets also may produce a wasteful abundance of content responding to mainstream

The empirical evidence available in the academic and trade literatures overwhelmingly supports the concerns expressed about the emergence of a hyper-commercialized, concentrated mass media. Commercialism can easily overwhelm public interest and diverse content.[571] Concentration drains resources from journalistic enterprises.[572] Empirical evidence clearly suggests that concentration in media markets– fewer independent owners — has a negative effect on diversity.[573] The evidence to support this conclusion includes both

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taste. Otherwise, the main problem is underproduction. Markets predictably provide inadequate amounts and inadequate diversity of media content. Especially inadequate is their production of "quality" content – quality meaning content that has positive externalities. Production of civically, educationally, and maybe culturally significant content preferred by the poor is predictably inadequate. Smaller groups will often be served inadequately, either in relation to democracy's commitment to equally value their preferences or due to the consequences of monopolistic competition."

570 Baker, 2002, p. 16.

571 Rifkin, Jeremy. *The Age of Access*. New York: Jeremy P. Tarcher/Putnam, 2000, pp. 7-9.

572 Layton, Charles, 1999. "What do Readers Really Want?" *American Journalism Review* March. reprinted in Gene Roberts and Thomas Kunkel, *Breach of Faith: A Crisis of Coverage in the Age of Corporate Newspapering.* Fayetteville: University of Arkansas Press, 2002; McConnell, Bill and Susanne Ault. 2001. "Fox TV's Strategy: Two by Two, Duopolies are Key to the Company's Goal of Becoming a Major Local Presence." *Broadcasting and Cable*, 30 July 2001 Trigoboff, Dan. "Chri-Craft, Fox Moves In: The Duopoly Marriage in Three Markets Comes with Some Consolidation." *Broadcasting and Cable, 6* August 2001; Trigoboff, Dan. 2002. "Rios Heads KCOP News." *Broadcasting and Cable,* 14 October 2002; Beam, Randal A. 1995. "What it Means to Be a Market-Oriented Newspaper." *Newspaper Research Journal* 16; 2002. "Size of Corporate Parent Drives Market Orientation." *Newspaper Research Journal* 23;Vane, Sharyn. 2002. "Taking Care of Business." *American Journalism Review* March; Neiman Reports. 1999. *The Business of News, the News About Business,* Summer.

40 Levin, Harvey J. 1971. "Program Duplication, Diversity, and Effective Viewer Choices: Some Empirical Findings." *American Economic Review* 61:2: 81-88 Lacy, Stephen. 1989. "A Model of Demand for News: Impact of Competition on Newspaper Content." *Journalism Quarterly* 66; Johnson, Thomas J. and Wayne Wanta. 1993. Newspaper Competition and Message Diversity in an Urban Market. *Mass Communications Review* 20: 45; Davie, William R. and Jung-Sook Lee. 1993. Television News Technology: Do More Sources Mean Less Diversity? *Journal of Broadcasting and Electronic Media 37, Fall: 453-464* Wanta, Wayne and Thomas J. Johnson. 1994. "Content Changes in the St. Louis Post-Dispatch During Different Market Situations." *Journal of Media Economics* 7; Coulson, David C. 1994. "Impact of Ownership on Newspaper Quality." *Journalism Quarterly*, 1994.; Coulson, David C. and Anne Hansen. 1995. The Louisville Courier-Journal's News Content After

anecdotal examples and statistical studies. The economic interests of media owners influence their advertising, programming choices, and how they provide access to political information.[574]

Conglomerates are driven by advertisers, who exercise influence over content.[575] Dangerous abuse of this influence ranges from favorable newspaper reviews of a broadcaster's programming[576] or loss of coverage,[577] to positive editorials/opinion articles

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Purchase by Gannett. *Journalism and Mass Communications Quarterly* 72:1: 205-215; Iosifides, Petros. 1999. "Diversity versus Concentration in the Deregulated Mass Media." *Journalism and Mass Communications Quarterly* Spring; Lacy, Stephen and Todd F. Simon. "Competition in the Newspaper Industry." in Stephen Lacy and Todd F. Simon (eds.), *The Economics and Regulation of United States Newspapers*. Norwood, NJ: Ablex, 1993.

[574] Soloski, John. 1979. "Economics and Management: The Real Influence of Newspaper Groups." *Newspaper Research Journal* 1; Bennett, W. Lance. *News: The Politics of Illusion*. New York: Longmans, 1988; Busterna, John C. 1988. "Television Station Ownership Effects on Programming and Idea Diversity: Baseline Data." *Journal of Media Economics* 2:3: 63-74; Herman, Edward and Noam Chomsky. *Manufacturing Consent*. New York: Pantheon Books, 2002; Glasser, Theodore L., David S. Allen and S. Elizabeth Banks. 1989. The Influence of Chain Ownership on News Play: A Case Study. *Journalism Quarterly* 66; Katz, J. 1990. "Memo to Local News Directors." *Columbia Journalism Review* May/June: 40-45 McManus, J. 1990. "Local News: Not a Pretty Picture." *Columbia Journalism Review* 28; Price, Monroe E. 1999. "Public Broadcasting and the Crisis of Corporate Governance." *Cardozo Arts & Entertainment* 17.

[575] Just, Marion, Rosalind Levine and Kathleen Regan. 2001. "News for Sale: Half of Stations Report Sponsor Pressure on News Decision." *Columbia Journalism Review-Project for Excellence in Journalism* November/December, p. 2.

[576] Strupp, Joe. "Three Point Play." *Editor and Publisher*, 21 August 2000, p. 23; Moses, Lucia. "TV or not TV? Few Newspapers are Camera Shy, But Sometimes Two Into One Just Doesn't Go." *Editor and Publisher,* 21 August 2000, p. 22; Roberts, Gene, Thomas Kunkel, and Charles Clayton. "Leaving Readers Behind." In Roberts, Gene, Thomas Kunkel, and Charles Clayton (eds.), *Leaving Readers Behind*. Fayetteville: University of Arkansas Press, 2001, 10.

[577] Belo. 2003. Comments of Belo Corp., *In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets*, MB Docket No. 02-277, MM Dockets 02-235, 01-317, 00-244, pp. 8-9; Karr, Albert. "Television News Tunes Out Airwaves Auction Battle." *Wall Street Journal*, 1 May 1996, p. B1.

about the business interests of a broadcaster or politician.[578] Such favoritism would be more difficult to prevent if cross-ownership were broadly permitted.[579] When the two largest sources of news and information – television and newspaper – come under the same ownership roof, there is special cause for concern about business pressures that could undermine the forum for democratic discourse.[580]

Left unrestrained, the marketplace will produce fewer watchdog activities conducted by less rigorous institutions. The public at large benefits from the watchdog function beyond the value that individual media firms can capture in their market transactions (advertising revenue and viewer payments). Baker uses investigative journalism as an example. Abuses are less likely to be uncovered and more likely to occur because the deterrent of the threat of exposure will be diminished.[581]

> One item both news entities "sell" is expose's on the content of investigative journalism. Not just the readers or listeners but all members of the community

[578] See Quincy Illinois Visitors Guide, 2001 edition; McConnell, Bill. "The National Acquirers: Whether Better for News or Fatter Profits, Media Companies Want in on TV/Newspaper Cross-Ownership." *Broadcasting and Cable*, 10 December 2001.

[579] Kunkel, Thomas and Gene Roberts. 2001. "The Age of Corporate Newspapering, Leaving Readers Behind." *American Journalism Review* May. On coverage of the 1996 Telecommunications Act see Gilens, Martin and Craig Hertzman. 1997. "Corporate Ownership and News Bias: Newspaper Coverage of the 1996 Telecommunications Act." Paper delivered at *the Annual Meeting of the American Political Science Association*, August, p. 8.

[580] Davis, Charles and Stephanie Craft. 2000. New Media Synergy: Emergence of Institutional Conflict of Interest. *Journal of Mass Media Ethics* 15, pp. 222-223.

[581] Baker, 2002, Id., p. 64: "Consider the merger of two entities that supply local news within one community – possibly the newspaper and radio station... Presumably the merged entity would still have an incentive to engage in at least a profit-maximizing amount of investigative journalism. But how much is that? The amount spent in the pre-merger situation may have reflected merely an amount that the media entity's audience wanted and would pay for (either directly or indirectly through being "sold" to advertisers). Alternatively, the pre-merger profit maximizing level for each independent entity may have reflected a competitive need to compare adequately to a product offered by its competitor. In this second scenario, competition may have induced increased but still inefficiently small expenditures on investigative journalism.

> benefit from whatever reform or better government or improved corporate behavior that occurs due to these stories. This journalism can create huge positive externalities. The paper's limited number of purchasers cannot be expected to pay the full value of this benefit - they have no reason to pay for the value received by non-readers. Even more (economically) troubling, a major benefit of the existence of news organizations that engage in relatively effective investigative journalism is that this journalism deters wrong doing by governmental or corporate actors - but deterred behavior produces no story for the journalism to report and hence for the media entity to sell. The paper has no opportunity to internalize these benefits of its journalism - an economic explanation for there being less of this type of journalism than a straight welfare economics analysis justifies.[582]

The positive externalities that Baker identifies with respect to the watchdog and experiential functions are part of a larger category of externalities associated with information products, particularly civic discourse content. Information products, to a significant degree, are seen as possessing attributes of public goods,[583] which markets fail to provide in adequate quantity or quality.

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[582] Baker, 2002, p. 64.

[583] Sunstein, Cass. 2000. "Television and the Public Interest." *California Law Review* 8, p. 517.

STUDY 19:
THE CONTEMPORARY TERRAIN OF MEDIA AND POLITICS DEMANDS MORE CONCERN ABOUT CONCENTRATION OF THE MASS MEDIA

MARK COOPER

ABSTRACT

Empirical evidence compiled since the implementation of the 1996 Telecommunications Act suggests that traditional explanations of media market behavior in certain areas is no longer applicable or relevant. The loss of relevance of older media market behavior theories is largely a function of changes in the social, economic and political structure, which has rendered them largely obsolete. Many assumptions about market conditions and the behavior of media owners that were once good predictors of market structures and market output, no longer apply.

The *Prometheus* ruling emphasizes that public policy must reflect social reality. Thus, it is important to give up the old theories that no longer explain reality and adopt new ones. However, the FCC continues to rely on theories that have no empirical relevance in the current social marketplace, which is increasingly becoming more heterogeneous. New theories based on recent empirical evidence suggest that the economic processes in media markets will not produce a vibrantly competitive media marketplace that serves the public interest. Furthermore, consolidation and conglomeration diminish diversity and create powerful media voices that have excessive influence. In light of the increasing heterogeneity of the population and the increasing homogeneity of political coverage, the evaluation of policies promoting increased consolidation need to be evaluated in the context of valid empirically sound media market behavior theories.

OLD THEORIES THAT NO LONGER APPLY MUST BE DISCARDED

The previous studies show that the empirical evidence compiled in the last decade supports traditional explanations of media market behavior in certain areas and rejects them in other areas. The rejection of some of the old saws is not necessarily a function of the fact that the explanations and theories were wrong in the past; rather changes in the social, economic and political structure may have rendered them obsolete. The assumptions about conditions in the market and behavior of media owners that made them good predictors of market structures and output in the past, no longer apply.

The essential point of the Court ruling in *Prometheus* is that public policy choices must reflect social reality. Thus, it is important to give up the old theories that no longer explain reality and adopt new ones. The most obvious first step is to recognize that, left to its own devices, the economic processes in media markets will not produce a vibrantly competitive media marketplace that serves the public interest. Consolidation and conglomeration diminish diversity and create powerful media voices that have excessive influence.

The FCC relied on two theories to claim that concentration of the media is good for consumers: Peter Steiner's[584] argument that concentrated media companies provide greater diversity and Joseph Schumpeter's[585] theory that monopolists produce more innovation. The

[584] Federal Communications Commission, Initial Notice.

[585] Notice, p. 32, provides the innovation discussion. "Further Notice of Proposed Rulemaking." *In the Matter of Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992, Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, The Commission's Cable Horizontal and Vertical Ownership Limits and Attribution Rules, Review of the Commission's Regulations Governing Attribution Of Broadcast and Cable/MDS Interests, Review of the Commission's Regulations and Policies Affecting Investment In the Broadcast Industry, Reexamination of the Commission's Cross-Interest Policy*, CS Docket No. 98-82, CS Docket No. 96-85, MM Docket No. 92-264, MM Docket No. 94-150, MM Docket No.

Commission and industry comments that restate these theories present no economic evidence in support of the arguments. The FCC either misrepresents the original idea, or fails to recognize that the assumptions underlying the theories do not fit the media market reality.[586]

The Steiner hypothesis has always been controversial as a proposition about diversity. "Overall, explicit tests of the Steiner model have provided mixed results in studies dealing with program choices. For the most part, studies dealing with television have rejected the Steiner theory on the basis of audience preference and the mechanics of the television broadcast industry." [587]

Many of the studies of the hypothesis conflate variety of formats with diversity of viewpoints. It is about entertainment, not news and information. Even in the narrow realm of variety, support has been mixed.

The critical assumption underlying Steiner's theory is a relative homogeneity of taste. The theory may have been true when it was first offered fifty years ago, given the make-up of the population and the demographic characteristics of the audience at whom the media were targeted. The empirical evidence of the past decade shows that strong differences in taste

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92-51, MM Docket No. 87-154, 13 September 2001, Para 36, issued on the same day as the original notice in the media ownership proceedings makes reference to Schumpeter in this discussion. The Chairman had made similar references to monopoly and innovation in his Broadband Migration speech and the argument appears word for word in the FCC's draft strategic plan (October 1, 2002).

[586] Information Policy Institute. "Comments of the Information Policy Institute." *In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets*, MB Docket No. 02-277, MM Dockets 02-235, 01-317, 00-244, January 2, 2003 (hereafter, Information Policy Institute), pp. 53-59.

[587] Chambers, Todd and Herbert H. Howard. 2006. "The Economics of Media Consolidation," in Alan B. Albarran, Sylvia N. Chan Olmstead and Michael O. wirth, *Handbook of Media Management and Economics* (Mahwah: Lawrence Erlbaum), p. 177.

result in preference minorities that are underserved and undervalued by the commercial mass media. Moreover, as the population becomes increasingly complex, the role of differences in information needs grows. Even where it can be shown that mergers allow a beat to be added, we find that upscale entertainment is the focus (mining the favored audience) at the expense of news and information. It is time for the Commission to abandon the theory supporting increased concentration in media markets. It no longer fits the reality of the conditions of civic discourse in America, if indeed, it ever did.

The Commission relies upon the Schumpeterian argument on transitory monopoly power to suggest it should allow or promote concentrated media markets to provide resources for investment. The Commission has misinterpreted or misapplied Schumpeter's argument.[588] The FCC seeks to justify market concentration, whereas Schumpeter focused on firm size. There is no doubt that the dominant commercial mass media firms are already large enough to possess economies of scale. Concentration that increases market power may undermine Schumpeterian processes because it dulls competition, which was central to his argument.

The monopoly rents earned by the innovative entrepreneur in the Schumpeterian argument must be transitory, lest they degenerate into plain old antisocial monopoly rents. Media industry moguls look and behave much more like traditional anti-competitive monopolists than innovative Schumpeterian entrepreneurs.[589] The underlying technologies have been relatively stable for decades. Strengthening the hand of entrenched incumbents using off-the-shelf technologies hardly seems the way to promote innovation and creative

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[588] Information Policy Institute, 2003, pp. 46-52.

[589] Consumers Union, et al. "Initial Comments of Consumer Federation," et al., *Cross Ownership of Broadcast Stations and Newspapers*, MM Docket No. 01-235, December 4, 2001.

destruction. The Commission's policies are having the opposite effect.[590] Here, as in the case of the Steiner hypothesis, the Commission has simply failed to accept the empirical facts.

Based upon the empirical evidence, the Commission must abandon the Steiner/Schumpeter justification for concentration and monopoly power in media markets. Whether these two arguments articulated over fifty years ago ever made sense for media markets is debatable, but it is overwhelmingly clear they do not fit the facts of 21st century America.

More importantly, the Commission must fully appreciate the critical role that competition plays in the current environment.

THEORY OF A DIVERSE, HETEROGENEOUS MEDIA ENVIRONMENT WITH STRONG PREFERENCES AND POLITICAL ENTREPRENEURS

Waldfogel's analysis described in Study 18 focuses tightly on media market structure and its political impact[591] and falls within a broader field that applies economic analytic techniques to the study of politics and the media.[592] In these theories, information dissemination and communications play critical roles, and link directly to a growing literature that concludes that the economics of the commercial mass media ultimately set the conditions

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[590] Cooper, Mark. *Cable Mergers and Monopolies: Market Power Digital Media and Communications Networks.* Washington, DC: Economic Policy Institute, 2002.

[591] Waldfogel, 2001a. Other papers in the series of studies of "preference externalities" include Waldfogel, 1999, *at* Siegelman and Waldfogel, 2001, Waldfogel and Oberholzer-Gee, 2001b, George and Waldfogel, 2000, as well as Waldfogel, 2001b; and Oberholzer-Gee and Waldfogel, 2001a.

[592] Glaeser, Edward L., Giacomo A. M. Ponzetto and Jesse M. Shapiro. 2004. "Strategic Extremism: Why Republicans and Democrats Divide on Religious Values." *Harvard Institute of Economic Research Discussion Paper Number 2044,* October; Glaeser, Edward. "The Political Economy of Hatred." *NBER Working Paper 9171.* Cambridge, MA: National Bureau of Economic Research, 26 October 2004; Mullainathan, Sendhil and Andrei Shleifer. 2004. The Market for News. *American Economic Review* 95.

for a tyranny of the majority in media markets. These literatures share fundamental assumptions, in particular an assumption of strong preferences unevenly distributed in a heterogeneous population. The literatures link media behavior directly to political processes, recognizing that the cost of information dissemination and voting play a key role in the political process.

These theories challenge major tenets of the perceived academic wisdom of the 1950s and 1960s that saw a rush to the middle and the search for the modal voter, which were predicted by an earlier generation of economists studying politics. These claims have been undermined by the strategic actions of political entrepreneurs in a context of social change.[593] The claim that the media passively meet consumer needs when they express their desires to advertisers has been undercut by media markets that actively pursue profit maximization by slanting output to serve highly segmented pluralities, especially when and where there are media monopolies.[594]

This realignment of the operation of commercial media markets with respect to the thrust of political activity is part of a broader shift in economic thinking. The assumption that rational actors, maneuvering freely in markets, can create and sustain efficient, stable economic equilibriums has been challenged. The stock market crash of 1987 and the bursting of the dot.com bubble in 2000[595] squarely refuted the efficiency and stability of the rational actor theory in the fortress domain of rational market theory – financial markets. The suspicion spread rapidly to other economic and social sciences.

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[593] Downs, Anthony. *An Economic Theory of Democracy*. New York: Harper, 1957;

[594] As argued by Steiner, Peter O. 1952. "Program Patterns and the Workability of Competition in Radio Broadcasting." *Quarterly Journal of Economics* 66.

[595] Shiller, Robert J. 2003. "From Efficient Markets Theory to Behavioral Finance." *Journal of Economic Perspectives* 17:1.

> At a broader level, this paper contributes to one of the central issues in economics, namely whether the presence of rational arbitrageurs keep financial markets "efficient." In the context of financial markets, Friedman (1953) argued long ago that it does. Subsequent research, however, has proved him wrong, both theoretically and empirically. One finding of this research is that, in some situations, such as stock market bubbles, it may pay profit-maximizing firms to pump up the tulips, rather than eliminate irrationality. Subsequent research has considered the interaction between biased individuals and rational entrepreneurs in other contexts, such as the incitement of hatred, political competition, and product design. Here we ask a closely related question for the market for news: does competition among profit-maximizing news providers eliminate media bias? We find that the answer, as in both financial and political markets, is no. Powerful forces motivate news providers to slant and increase bias rather than clear up confusion.[596]

As oversimplified economic efficiency explanations falter, sociological explanations fill the gap. Psychology re-enters political analysis and sociology informs the vast analyses of the media's role in society. The key social change that has upended the old theories and gives credence to the economic theory of media discrimination is the increasing heterogeneity of the population.

HETEROGENEITY, EXTREMISM AND POLITICAL ENTREPRENEURSHIP

The terrain of media and discourse is driven by differentiation in a heterogeneous population with an active involvement of politically motivated actors seeking to influence the presentation of news and information in the media. Waldfogel's story in the media is writ large across a number of fields.

[596] Mullainathan and Schleier, 2004, pp. 5-6. Friedman, Milton. 1953. "The Case for Flexible Exchange Rates." *Essays in Positive Economics.* Chicago: University of Chicago Press, 1953.

Differentiation around salient values is the fundamental concept that links the social science discussions. The fundamental observation that underlies this analysis is that firms or political organizations seek to differentiate themselves along a product dimension. Economists assume salience of values (or the lack thereof) and study its implications for firm behavior. A primary area of sociological inquiry is the analysis of the nature and quality of salience itself. Political science studies how to create salience through priming and agenda setting.[597]

In the economy, firms want to distinguish themselves according to the value that is more meaningful to the consumer. "Firms choose to maximize differentiation in the dominant characteristic and to minimize differentiation in the others when the salience of the former is sufficiently large."[598] Differentiation in the mind of the consumer eases competitive pressures and allows profit maximization. If a single dimension is sufficiently salient, it will become the primary axis of differentiation while other product dimensions will be downplayed.

The sociological literature finds that heterogeneity is the key to group differentiation and negative intergroup perceptions. "Negative perceptions of out-groups are higher for those who live in neighborhoods with more of their own racial group. It is important to bear in mind that, these differences are also relative to the racial composition of the metropolitan area. The effects of neighborhood racial isolation are greatest for people in more diverse

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[597] Lohmann, 1998, p. 948, "We can expect political competition to work well in preventing an incumbent from acting against the interests of constituents only if an issue is salient in the public mind – or if it can be made salient in a future election by an interest group or a challenger."

[598] Irmen and Thisse, 1998, p. 5; Neven and Thisse, 1990; Tabuchi, 1994; Tirole, 1988. Interestingly, the example chosen involved U.S. Weekly magazines that try to differentiate themselves by cover stories (Irmen and Thisse, 1998).

metropolitan areas."[599] In other words, as the environment becomes more heterogeneous, the threat from outgroups grows and differentiation becomes more salient.

The social distribution of populations and the psychological perception of groups interact to influence policy preferences. For example, with respect to the key economic issue such as redistribution, the sociological observation parallels the economics described by Waldfogel in Study 18.

> Demographic fragmentation affects redistribution because it influences how the political process aggregates individual preferences. Interpersonal preferences provide a complementary explanation. If individuals prefer to redistribute to their own racial, ethnic or religious group, they prefer less distribution when members of their own group constitute a smaller share of beneficiaries. As demographic heterogeneity increases, on average, the share of beneficiaries belonging to one's own group declines. Thus average support for redistribution declines as heterogeneity increases.[600] .[601]

The political science literature offers a conclusion similar to that of the economic literature with respect to differentiation. "At any time, politics will appear largely one-dimensional because the existing party activist equilibrium will define party differences along the dimension that distinguishes them. One-dimensional models will successfully predict most of the variation in legislative voting platforms."[602]

Similar to the sociological literature, the political science literature offers the observation that "[e]xtremism rises with the heterogeneity of voters' preferences. As there is a greater range of preferences in the population, party platforms will get more extreme."[603] But the political science literature goes one step further. Entrepreneurial political leaders and

[599] Oliver and Wong, 2003, p. 380.
[600] Luttmer, 2001, p. 519.
[601] Hecter, 2004, p. 400.
[602] Miller and Schofield, 2003, p. 249; Koford, 1999; Karol, 1999.
[603] Glaeser, Ponzetto and Shapiro, 2004, p. 13.

activists tend to be more extreme than the mass of voters and to exploit shifting preferences to drive differentiation.

The political entrepreneur wants to raise the perceived benefit among supporters by lowering the perceived cost of voting, while achieving the opposite among non-supporters. The cost to politicians of reaching voters becomes a critical issue in election campaigns. The cost to consumers of learning the facts is a key determinant to the effectiveness of political entrepreneurs at tailoring and managing the messages they seek to deliver. The political entrepreneur uses media and communications to mobilize voters by influencing individuals – increasing the benefits and lowering the cost of action.

Psychological fundamentals dictate the avenues through which this influence flows. Individuals are considered to have strict core values while remaining flexible (or persuadable) to a greater or lesser degree on other values. The salience of any set of values (even core values) at any moment is neither predetermined nor nearly determinable.[604]

The political activity of targeting exploits the fact that individuals "prefer to hear or read news that [is] more consistent with their beliefs," and that they especially "appreciate, find credible, enjoy, and remember stories that are consistent with their beliefs." Contrarily, individuals "tend to ignore category-inconsistent information unless it is large enough to induce category change."[605] Psychologically, individuals prefer consistency and reinforcement of their views and preferences, but they remain susceptible to influence by their networks, particularly its leaders, and the media.

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[604] Murphy, Kevin M. and Andrei Shleifer. 2004. Persuasion in Politics. *American Economic Review* 94, p. 1.
[605] Mullainathan and Shleifer, 2004, p. 3.

The effectiveness of the message flows from the "ease with which it comes to mind,"[606] the target's capacity to understand,[607] and the target's willingness to think about the message.[608] Effectiveness may also hinge on whether or not a targeted group considers itself directly and personally affected by the message,[609] especially "where the message is central to the group identity."[610] These characteristics induce elaboration on the message.[611]

We would expect the importance of ideology as a motivation for political participation to vary over time; however, depending on salience and clarity of ideological cues provided. The more extreme the position taken by a party's leaders and the more those leaders emphasize ideological appeals, the more likely that party will be to attract ideologically motivated activists. Identifying one's group as affected and hearing messages that appear to put the groups interests in play catches the listeners attention. The drift to the extreme will be accelerated if the group is moderately large (close to half the population) and can be readily sorted. If this is the case, members of the organization are connected to each other but separate from others outside the organization.[612]

THE ROLE OF THE MEDIA AND MESSAGING

We should not be surprised to find that the media play a large part in this process. We have described the impact of the press and the tendency for the press to become politicized earlier, as well as the recent economic analysis of media markets that reach a conclusion on

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606 Sengupta and Fitzsimmons, 2000.
607 Eagly, 1974.
608 Fabrigar, et al., 1998; Albararacin and Wyer, 2001; Jacks and Devine, 2000.
609 Petty, Ostrom and Brock, 1981.
610 Niven, 2004, pp. 878-9; Platow, Mills and Morrison, 2000; Armitage and Conner, 2000.
611 Nienhuis, Manstead and Spears, 2001; McLeod and Becker, 1974; Scheufele, 2004.
612 Murphy and Shleifer, 2004, p. 3.

differentiation that is similar to the other social science conclusions.[613] Because the media are the primary means of political communication, especially during elections, the resulting political discourse is skewed against minority viewpoints.

The media play a crucial role because media influence opinions and motivate action. The more aware voters are, the more likely they are to vote. Successful mobilization hinges on lowering the costs of voting for citizens, while facilitating the mobilizing process for parties and organizations. The objective of political entrepreneurs, though, is a differential voter turnout between supporters and non-supporters. This is achieved by moving their platforms away from the center and toward the ideology of the core constituency. The process is stimulated and accelerated by information management, which is effective because differential awareness of a politician's positions increases turnout among supporters more than the opponent's supporters.

Partisan media and channels of communication become extremely important, since they can help to target messages. "Extremism occurs whenever there is some ability to target information to a group whose preferences differ from the preferences of the nation as a whole."[614] Particularly powerful is negative campaigning, which depresses voter turnout among those with the least interest and information about the campaign,[615] but does not have that effect on one's own supporters.

Targeting is aided by ideological, geographical and institutional segregation. "Party affiliation means differential access to information about the party platforms. One way in

[613] Waldfogel, Joel. 1999. "Preference Externalities: An Empirical Study of Who Benefits Whom in Differentiated Product Markets." *NBER Working Paper 7391* Cambridge: National Bureau of Economic Research , p. 30, had already proven the proposition for radio. Other studies in this line of research demonstrated it for newspapers and television.

[614] Glaeser, Ponzetto and Shapiro, 2004.

[615] Ansolabehere and Iyenger, 1997; Kahn and Kenney, 1999.

which parties may gain the ability to broadcast messages is to have access to a selected subgroup of the population, such as a Church or a Union."[616] Such organizations facilitate recruitment since "Political mobilizers are most likely to turn to people they know when seeking recruits."[617] People are more likely to be influenced by people they know.

Using organizations and the media, political entrepreneurs seek to energize their supporters, without energizing the supporters of their opponents. Political entrepreneurs target and tailor their messages to activate and unify their supporters while confusing and dividing adversaries. They prevent alienation among their own supporters while promoting indifference among the opponent's supporters. Well-recognized strategies include staging events, spinning, and slanting.

"With access to a social group, a party will shift its policies… towards the preferences of the members of the organization. If the opposing party is prevented from also gaining access to the organization, this shift yields an increase in the margin of victory."[618] Management of preferences across a range of issues is grounded in the core preferences of the group, which are framed by slanting and spin. Sorting and separation enhance the political value of the network, but the location of the groups are not predetermined or given, they are the result of strategic choices and action.

People in different networks are too far apart in their beliefs to persuade each other. Such separation is essential for the leaders of the networks: if a network comes too close to

[616] Glaeser, Ponzetto and Shapiro, 2004, p. 17.
[617] Campbell, 2004, p. 160; Brady, Schlozman, and Verba, 1999.
[618] Glaeser, Ponzetto and Shapiro, 2004, pp. 18-19.

others, its members might come under foreign influence, and as a consequence the ideological coherence of the network is endangered.[619]

Activists have a pivotal function in both the sociology of organizations and the political dynamics of parties and elections. Sociologically, they have key characteristics of influential communicators – commanding respect and sharing characteristics with the broader group of members.[620] Politically, activists are the central agents in the recruitment and motivation process and have the greatest influence over political candidates.[621] Ideological clues make it easier to attract activists.[622]

The battle for the middle requires a campaign to pull voters out of the middle as opposed to repositioning the candidate more firmly on middle ground.[623] Political entrepreneurs want to stimulate activists (interested, strong supporters) and motivate more passive supporters. They particularly want to get their activists interacting with passive supporters and interested independents. They want to persuade the interested middle. They want to demobilize the less interested among their opponent's supporters and dishearten the more interested.

Negative campaigning helps among the less interested and less committed. Negative advertising and fear campaigning are inevitable parts of mass media politics as well.

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[619] Murphy and Shleifer, 2004, p. 5.
[620] Nivens, 2004.
[621] Saunders and Abramovits, 2004; West, 1998.
[622] Abramovitz and Saunders, 1998.
[623] Gulati, Girish. 2004. "Revisiting the Link Between Electoral Competition and Policy Extremism in the U.S. Congress." *American Political Science Review 32:5*, rejects the moderation hypothesis and confirms an alternative, mobilization hypothesis, noting that "It seems as if marginal incumbents are concerned that appealing to voters in the center will alienate more of their core supporters than they would gain from new voters in the center (p. 510)." They link this behavior to the role of "their prime constituency… most of whom are well outside the ideological mainstream of the district."

They make up a small part of the total expenditure and ideological platform and they drive the important wedges, but they must be used carefully or they can backfire.

The intersection of audiences and messages is complex and makes moving the electorate difficult. Management of messages is made feasible by geographic dispersion and institutional separation of the audiences.

MEDIA BIAS AND POLITICAL ENTREPRENEURS

It should also be noted that the media is not just a tool that political entrepreneurs manipulate to achieve short-term goals like getting elected. One of the most important classes of political entrepreneurs is made up of media owners. Media owners have discretionary resources and the means of influencing public opinion as a result of their market power. Oligopolistic competition gives owners resources and drives them toward extremism. Politically motivated media owners have the same interest in creating and controlling more outlets to give their ideas a greater advantage in finding audiences. The maldistribution of "deep enough pockets," creates a maldistribution of media outlets.

But the politicization of the media goes far beyond the traditional concern about media owners as political entrepreneurs. Just as long-term, underlying social and economic changes may profoundly affect the terrain on which the political battle is fought, so too fundamental changes in media technology can alter the landscape of politics.

The fundamental economic characteristics of media production in the electronic age create forces for oligopolistic, or monopolistic, competition that supports the political role of the media in two ways.

First, the media tend to serve subsets of the population to maximize profits, where preferences are diverse. They value larger groups and target wealthier audiences who provide the bulk of the returns for advertisers. Sensationalism sells, as long as it does not upset the target audience, a technique that weighs particularly heavily on those that can be easily influenced, potentially distorting their view of 'what is really going on' or 'what is really important.'

To differentiate themselves, media outlets tend to be more extreme than the audiences they target. The economic characteristics of media outlets reduce the number of sources available in the major media, especially at the local level. This creates a high rate of profit and reduces competition. Differentiation along major lines of division becomes manageable.

The model of the market for news offers additional insights into the behavior and distribution of news sources. Media outlets do not just reflect the market. To maximize profits, media outlets will slant news to cater to reader bias. Competition does not solve the problem. "With heterogeneous readers, competition by itself polarizes readership and if anything raises the average reader bias. News sources can be even more extreme than their most biased readers. One cannot therefore infer reader beliefs directly from media bias."[624]

News sources taking more extreme positions to differentiate themselves is not the only reason that the distribution of news sources might not simply reflect the underlying distribution of preferences. "[S]uch differences are reinforced by political entrepreneurs, who have an incentive to create particular beliefs that would bring them support… Newspapers

[624] Glaeser, Ponzetto and Shapiro, 2004, p. 15.

would then follow these entrepreneurs in mirroring and reinforcing the beliefs of their supporters."[625]

The political process creates a strong incentive to spin the news, and political entrepreneurs have an interest in managing it.

> Suppose that a politician, or some other figure of authority, has a first mover advantage, i.e. can choose which data… gets presented to the media first… The papers slant these data toward reader beliefs, but… will have significant influence on what they report as compared to their getting data from an unbiased source… This effect becomes even more powerful in a more general model of sequential reporting. In this case, the initial spin may shape reader priors which future papers face and consequently slant news towards. The initial spin would then be reinforced even by ideologically neutral papers.[626]

> Political competition is only one source of underlying reader diversity. We can also imagine entrepreneurs starting newspapers on their own, so long as they have deep enough pockets, creating enough demand for unorthodox views to broaden the range of opinions (and slants) that are being covered. Ideological diversity of entrepreneurs themselves may be the source of diversity of media coverage.[627]

The strategy for slanting and spinning leads back to the initial discussion of the goal of differential mobilization of supporters and opponents. The best issues "bind the networks that support you, and divide those of your opponent."[628]

The role of political entrepreneurs and the political role of media owners add the final link in the analysis. Groups formed around core values become the vehicles for mobilizing voters through asymmetrical informational awareness and are reinforced by slanting and spin. Political entrepreneurs can rent them out on issues that are not at their core.

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[625] Glaeser, Ponzetto and Shapiro, 2004, p. 20.
[626] Mullainathan and Shleifer, 2004, p. 12.
[627] Glaeser, Ponzetto and Shapiro, 2004, p. 21.
[628] Murphy and Shleifer, 2004, p. 8.

In this framework, political competition does not lead to convergence of party platforms to the views of the median voter. Rather, parties separate their messages and try to isolate their members to prevent personal influence from those in the opposition.[629]

The battle over bias in the media is an essential outgrowth of the underlying political process discussed above. Discrediting sources of information that the political entrepreneur does not control or are hostile towards serves the purpose of explaining and dismissing inconsistencies that threaten to shake the faith of one's supporters. It diminishes the extent to which channels of uncontrolled media can heighten awareness of one's intentions, which threatens to mobilize opponents. It raises doubts among the supporters of one's opponents and makes it harder for the conscientious citizen to ascertain the facts. The actual behavior of the media need not have changed for the battle over bias to be ignited; nor does the bias actually have to be true for charges of bias to be repeated. The claim serves a political purpose.

A particularly clear example of this from the 2004 Presidential election campaign was a *New York Times* story that reported a private meeting with important supporters at which President Bush was said to have promised to move quickly on privatization of social security (pumping up the base). The Bush campaign adamantly denied the account (attempting to reduce the message to opponents of a threat to one of their core values), claiming the erroneous story was a result of the ongoing bias of *The Times*. Yet, the president's highest domestic agenda priority after the election was privatizing social security, even though exit polls showed that very few mentioned it (less than 5 percent).

If we recount a series of "fact checking" exercises from the 2004 presidential campaign we can see the ambiguity in the outcomes that makes a simple correlation between

[629] Murphy and Shleifer, 2004, p. i.

reporting and bias difficult to determine. Abu Ghraib, a scoop that was held up for two weeks at the behest of the Pentagon, proved to be a "true" statement of facts, although its implications and meaning were subject to considerable debate. The missing 380 tons of high explosives was a scoop that got out sooner than the initial source had intended. The facts were disputed and remained in dispute until the election, when the relevance of the issue was eliminated and reporting stopped (although the final word seems to indicate the scoop was correct). The Bush National Guard memo proved to be a fraud. All three incidents involved one network. Does the scoop offset the scandal? Should the network lose its anchor for the journalistic lapse, or get a Pulitzer for its investigative excellence?

The critique of the commercial mass media and the discussion of the impact of message management and the television news cycle on the process of political discourse are structural arguments, not indictments of the citizenry. Our concern is with the tendency of the institutions to make certain types of content available and ubiquitous, which distorts the pattern of discourse.

THE IMPORTANCE OF COMPETITION

This analysis of the market for news and its impact on the political process does have a potential bright spot. We can assume that by creating divergent, biased views, competition expands the range of news sources available. "Market segmentation benefits a conscientious reader, who can then aggregate the news from different sources to synthesize a more accurate picture of reality."[630] Thus, conscientious readers have a broader range of information to sample in their search for the truth, even though the desire for truth cannot drive out bias.

[630] Mullainathan and Shleifer, 2004, pp. 19-20.

A different assumption about reader behavior predicts that competition alone will reduce the bias of news outlets.[631] If readers prefer truth and reputations suffer when errors in reporting are discovered, then competition drives outlets toward less biased reporting.

Under both sets of assumptions, heterogeneity is crucial to reducing the impact of bias. In the former, it occurs at the level of the reader, who can ferret out the truth by cross-checking, if interested. Unfortunately, the political process raises the cost of finding sources, particularly where the distribution of sources is skewed. Moreover, political processes and the informational process of 'spinning' strive to diminish the number of conscientious readers. The conscientious reader is not part of the constituency sought out by the political entrepreneurs. In this way, media driven political entrepreneurship distorts the production of news and information.

Under the second assumption, bias is reduced at the level of the outlets, which fear loss of readers. Unfortunately, this outcome requires the proportion of conscientious readers to be sufficiently large and their ability to divine the truth sufficiently well developed to impose economic pain on disreputable outlets.

The two conflicting interpretations of the effect of competition lead us back to Baker's formulation of complex democracy.[632] Partisan outlets are probably an inevitable part of the political process and should be recognized as such (so readers can better evaluate bias). Competition, within and between partisan camps, may help to eliminate the most egregious biases. Competition between outlets may prevent them from moving too far to the extremes, but we should not expect them to end up in the middle, consistent with the underlying assumption about differentiation from which this analysis was launched.

[631] Gentzkow and Shapiro, 2004.
[632] Baker, C. Edwin. *Media, Markets and Democracy*. Cambridge: Cambridge University Press, 2001.

In both approaches, competition is to be encouraged. Looking at the level of the behavior of news outlets, Gentzow and Shapiro conclude:

> An advantage of our model is that it generates sharp predictions about where bias will arise and when it will be most severe… In the current debate over FCC ownership regulation in the U.S., the main argument in favor of limits on consolidation has been the importance of "independent voices" in news markets. [Our model] offers a new way to understand the dangers of consolidation: independently owned outlets can provide a check on each others' coverage and thereby limit equilibrium bias, an effect that is absent if the outlets are jointly owned.[633]

Ellmen and Germano argue that one of the avenues competition may reduce bias in news, where readers want accurate reporting, is to weaken the effects of advertising.

> We model the market for news as a two-sided market where newspapers sell news to reader who value accuracy and well space to advertisers who value advert-receptive readers. We show that monopolistic newspapers under-report or bias news that sufficiently reducers advertisers profits. Newspaper competition generally reduces the impact of advertising. In fact, as the size of advertising grows, newspapers may paradoxically reduce advertiser bias, due to increasing competition for readers.[634]

Analyzing the behavior of individuals in seeking news sources – a direct test of the conscientious reader hypothesis[635] – Garrett reaches a similar conclusion:

> The data show that though online sources are an important source of news for a large and growing number of individual, major news organizations continue to dominate the news landscape, online and off. Furthermore, when these sources

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[633] Gentzkow and Shapiro, 2004, p. 33.

[634] Ellman, Mathew and Fabrizio Germano. 2004. What Do Papers Sell? *UPF Economics and Business Working Paper No. 800,* p. 1.

[635] Tsfati, Yariv and Joseph N. Cappella. 2005. Why Do People Watch News They Do Not Trust? The Need for Cognition as a Moderator in the Association between New Media Skepticism and Exposure. *Media Psychology* 7, demonstrates that the need for cognition, "a need to structure relevant situations in meaningful, integrated ways" (p. 254), is one critical dimension that affects information search strategies. Those with high needs for cognition are good candidates for the role of conscientious voters. "Because those high on NFC enjoy thinking in general, the cognitive need made them process the message regardless of their mistrust of the source. For those low on NFC, message processing was influenced by the source trustworthiness manipulation." (P. 266).

> are used, they are used to supplement mainstream sources. Online outlets are not at this point a serious competitive threat to the mainstream players….
>
> The results confirm that in their search for political news people are unlikely to reject biased news sources… In the absence of unbiased mainstream news sources, however, most people will choose an outlet that consistently supports their own viewpoint over one that is a consistent source of challenge…. The findings regarding preferences underscore the importance of a news market that contains balanced news outlets, while the data on contemporary uses of Internet news cannot yet look to online news to ensure that such a market exists.[636]

In the heterogeneous, politicized media environment, the only way to promote balance is to promote competition between, not consolidation, of media outlets. The theories that touted benefits of concentration do not fit the contemporary media landscape. Competition between mass media is more important than ever.

HETEROGENEITY OF NEEDS AND DIVERSITY OF SOURCES

There is a second strand of the literature that argues for policies that promote diversity that flow from the discussion of the conscientious voter. Heterogeneity of individual characteristics and involvement in the public sphere gives rise to heterogeneity of needs for different types of information. There is a stream of thought about voter behavior that runs through the social science literature that underscores the difference between voter orientations. It is a mistake to assume that voters need to be constantly mobilized and informed.[637] According to this argument, for average citizens, passive monitoring and intermittent mobilization is all that can be hoped for, or necessary, for democracy to function.

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[636] Garrett, R. Kelly. "Media Deregulation and the Online News Market." *Telecommunications Policy Research Conference* September 2005, pp. 26-27.

[637] Graber, 2003; Baum, 2003; Zaller, 2003; Hibbing, J. and Theiss-Morse, E. *Stealth Democracy: Americans' Beliefs About How Government Should Work.* Cambridge: Cambridge University Press, 2002; Schudson, 1998.

Involved, knowledgeable member of the public are best served by more substantive sources.[638] They seek out different types and quantities of information (news v. television) from different types of sources (noncommercial v. commercial).[639] Passive monitors in the public desire simpler presentation and are reached by different types of media.[640]

> Learning about political candidates before voting can be a cognitively taxing task, given that the information environment of a campaign may be chaotic and complicated… Different voters adopt different strategies, with the choice of strategy dependent on the campaign environment and individual voter characteristics.[641]

This is a challenging environment that taps the best of the Supreme Court First Amendment jurisprudence in contemporary society. As Benkler notes,

> *Red Lion*, however, is about a realization that free speech is not an anti-government concept, but rather a commitment to sustain an information environment in which a society's constituents can be both collectively self-governing and individually autonomous…. *Red Lion* continues to be living precedent for the proposition that the value of free speech itself requires government to secure a diverse, open information environment as free of private monopolization as it is of governmental control. It continues to be living precedent for the understanding that free speech is a value respected in the real world, on the background of the technological and economic conditions that make our information environment more or less concentrated, more or less open to public discourse and individual expression. The free speech value requires government to husband the information environment well. [642]

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[638] Lipsitz, Keena, et al. 2005. What Voters Want From Political Campaign Communications. *Political Communications* 22.

[639] Aarts, Kees and Holli A. Semetko. 2003. "The Divided Electorate: Media Use and Political Involvement." *Journal of Politics* 65:3, Newton, Kenneth. 1999. "Mass Media Effects: Mobilization or Media Malaise." *British Journal of Political Science* 29; Druckman, James N. 2005. Media Matter: How Newspapers and Television News Cover Campaigns and Influence Voters. *Political Communication* 22.

[640] Lipsitz, et. al., 2005.

Redlawsk, David P. 2004. "What Voters Do: Information Search During Election Campaigns." *Political Psychology* 25:4, p. 595.

[642] Benkler, Yochai. 2000. "Review." *International Journal of Law and Information Technology* 8:2, p. 214.

CONCLUSION

Although theory formation around this new view of media markets and their impact on political processes is in the early stages, it is already affecting the framing of research questions. For example, a study by the FCC,[643] which was suppressed, cites the Mullainathan and Schliefer,[644] George and Waldfogel,[645] and Stromberg studies[646] as part of the animus to analyzing the link between media market structure and production of local news.

> We suggest that divergent ownership patterns induce different cost structures, advertising access, and agency problems, each of which, separately and interactively, produce different levels of local news among the firms…
>
> As we suggest in this paper, the FCC media ownership rule-making and subsequent Congressional action may affect the composition of local news broadcasts. This may be important, given the world of Stromberg, and George and Waldfogel that suggest information consumed at the local level has substantial political-economic distributional consequences.[647]

The second line of argument, embodied in the Gentzkow and Shapiro[648] analysis, has been cited as the framework for analyzing the sources on which citizens rely.[649]

> First, scholars have noted that media owners are self-interested with political intentions. To the extent that media owners are interested in using their properties to influence public opinion, mergers will often (though not always) reduce ideological diversity.
>
> Gentzkow and Shapiro suggest that a second mechanism linking consolidation with biased coverage is the importance of reputation in the news market paired with news consumers' tendency to perceive viewpoint consistent sources as more reliable….

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643 Anonymous, 2004.
644 2004.
645 2000
646 Stromberg, David. 2004. "Mass Media Competition, Political Competition and Public Policy," *Review of Economic Studies,* (71 (2004).
647 Anonymous, 2004, p. 16.
648 2005.
649 Garrett, 2005

The findings regarding news preferences underscore the importance of a news market that contains balanced news outlets, while the data on contemporary uses of Internet news suggest we cannot yet look to online news to ensure that such a market exists. [650]

[650] Garrett, 2005, pp. 5… 27.

PART VIII:
MEASURING MARKET CONCENTRATION

STUDY 20:
THE CRITIQUE OF THE FCC APPROACH TO MEASURING MARKET CONCENTTRATION

MARK COOPER

ABSTRACT

The United States Court of Appeals for the Third Circuit, which overturned the FCC's media ownership rules issued in 2003, accepted the proposition that the FCC should analyze media market structures and measure market concentration, but it thoroughly rejected and roundly criticized the FCC's methodology. The court sent the rules back to the FCC and outlined steps necessary to arrive at a reasonable result. This paper describes the Court's critique of FCC's methodology and media ownership rules. Studies 21 and 22, which follow, propose more rational methodologies for measuring market structure and argue that concentration thresholds used in the media ownership proceeding must reflect the diversity and localism goals embodied in the Communications Act.

RULERS V. RULES

In discussing the approach taken to market structure analysis, Ken Ferree, head of the Media Bureau, would emphasize that people must not confuse the ruler with the rules. As an example, he recounted a story about his life-long desire to be a fighter pilot. The problem was, he grew to be 6 feet 6 inches. He got too tall to comfortably fit in a cockpit and the military had a height limit. The ruler was not the problem, the rule was.

Market structure analysis is a ruler, not a rule. Whatever rule that is proposed, can be assessed with the ruler. The *Prometheus* Court[651] found that the FCC had bungled both jobs, crafting the ruler (the Diversity Index) and writing the rule (cross-media limits).

The fact that the FCC did such a bad job does not mean it can simply quit. It still must find a way to measure diversity and competition in local media markets and write rules that promote the goal of "the widest dissemination of information from diverse and antagonistic sources." Three Courts have now told the FCC to carefully count voices.[652] Perhaps because it was FCC's third try, the *Prometheus* Court gave the Commission a detailed road map.

The legal standard for reviewing rules is important because it establishes the quality of the analysis that must be conducted in support of a rule. At the most basic level, Congressional intent is important and a Court "may find an agency rule is arbitrary and capricious where the agency has relied on factors which Congress has not intended it to consider." This can be termed "an abuse of discretion, or otherwise not in accordance with the law."[653] The Court asks whether "the agency examined the relevant data and articulated a

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651 *Prometheus Radio Project, et al. v. FCC* 373 F.Supp 372(2004) (*Prometheus).*;

652 *Fox Television Stations, Inc., v. FCC*, 280 F.3d 1027 (D.C. Circ. 2002) (*Fox*); *Sinclair Broadcasting, Inc. v. FCC,* 284 F.3d 148 (D.C. Circ. 2002) (*Sinclair*).

653 *Prometheus*, 373 F.Supp. at 390.

satisfactory explanation for its action, including a 'rational' connection between the facts found and the choice made." If not, it can be concluded that "the agency made a clear error in judgment."[654]

Although an expert agency like the FCC is given discretion in writing rules, at a more complex level the Courts will overturn rules if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decisions that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[655] In the case of an exercise such as identifying thresholds for merger review under the Administrative Procedures Act (APA),

> the traditional APA standard of review is even more deferential "where the issues involve 'elusive' and 'not easily defined,' areas such as program diversity in broadcasting." Yet… a "rationality" standard is appropriate… when an agency has engaged in line-drawing determinations… its decisions may not be "patently unreasonable" or run counter to the evidence before the agency.[656]

Thus, legal practice does not demand (and social science cannot provide) perfection or even great precision in the analysis. It demands substantial evidence, consistent reasoning, choices that are reasonable and results that are rational.

ANALYTIC AND METHODOLOGICAL FLAWS IN THE FCC'S RULER

In *Sinclair*, the D.C. Circuit Court had criticized the FCC's rule limiting the ownership of multiple TV stations within a single market (the duopoly rule) because it had counted

654 *Id.* at 389..
655 *Id.*, at 390.
656 *Id.*

media “voices” in the same market differently for each of its rules.[657] The *Sinclair* court wanted consistency between rules. As a result of the *Sinclair* decision, when later reviewing the rule that prevents the holder of a television station license from owning a newspaper in the same market in its biennial review, the FCC had to confront the task of treating different media consistently head on. It had to deal with the challenge of combining media in one framework. Thus, the central issue in the 2003 cross-ownership proceeding – how to count different media within the same market – is the very issue that led the *Sinclair* court to reject FCC’s television station duopoly rules.

In 2003, FCC responded to *Sinclair* by modifying a standard antitrust approach to create a consistent empirical framework for evaluating media outlets in a local area. Where different *types* of media had to be considered together (e.g. in the question of mergers between newspapers and television stations) the FCC attempted to create a single “Diversity Index.”

The *Prometheus* court accepted the general antitrust framework and even the idea that a single index *could* be created, but found the FCC’s implementation to be faulty. “But for all of its efforts, the Commission’s Cross-Media Limits employ several irrational assumptions and inconsistencies.”[658] The Court identified three primary problems in the implementation of the Diversity Index.

The FCC refused to analyze the actual audience of a media outlet, assuming instead that all outlets within a media type are equal. Its weights for combining each type of media

[657] *Sinclair*, 284 F.3d at 162-65.
[658] *Prometheus*, 373 F.Supp at 402..

were inconsistent and not based on sound empirical measures.[659] The link between the index and the merger approval was tenuous at best.[660]

The Court found that the FCC had not properly weighted the various media. "In converting the HHI to a measure for diversity in local markets, however, the Commission gave too much weight to the Internet as a media outlet."[661] The Court focused on the handling of the Internet, in part, because of the extensive arguments presented by media owners to the Commission that the Internet had dramatically changed the media landscape. In fact, the mishandling of radio actually has a larger impact. However, viewing the issue through the portal of the Internet provided the Court with the opportunity to present a richly nuanced discussion of the media's output and function. By assigning a substantial weight to the Internet, the FCC has failed to note that there is very little independent local news and information produced by many of the websites the FCC pointed to.[662]

The reach of the outlet is also important. The Court made this clear in the discussion of the way the FCC treated cable and the Internet. The Court said it chose to "affirm the Commission's reasoned decision to discount cable . . . [b]ut we think that the same rationale also applies to the Internet."[663] The FCC had excluded cable from the local news and information market, since it found that there was little local news available and few such channels reach the public. For example, the FCC found that for many who said they watched cable for news, "cable news channels were probably confused with broadcast network

[659] *Id.,* at 404-09.
[660] *Id.,* 409-11.
[661] *Id.*, at 403.
[662] *Id.*, at 406.
[663] *Id.,* at 405..

news."[664] Moreover, only 10 to 15% of cable systems include channels that provide local and public affairs programming."[665]

A close look at the data showed the *Prometheus* Court that the Internet exhibits characteristics that are similar to cable. For example, "62% of Internet users get local news from newspaper websites, 39% visit television web sites."[666] The FCC's claim that "the Internet is available everywhere," was challenged by the fact that "almost 30% of Americans do not have Internet access."[667] The Court concluded that "on remand the Commission must either exclude the Internet from the media selected for inclusion in the Diversity Index or provide a better explanation for why it is included in light of the exclusion of cable."[668]

As discussed in the analysis of media usage, part of the FCC's problem was caused by weak methodology. The FCC recognized the importance of evaluating the use of the media.[669] In order to address the issue, it commissioned a survey. Yet, the FCC failed to ask the right questions and proceeded to make rules with admittedly faulty data. "*Unfortunately, we do not have data on this question specifically with regard to local news* and current affairs. The available 'primary source' data address local and national news together and do not show that different media have different importance, in the sense that primary usage differs across media."[670]

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[664] *Id.*
[665] *Id.*
[666] *Id.*, at 406.
[667] *Id.,* at 407.
[668] *Id.,* at 408..
[669] *FCC Ownership Rules Order,* at ¶¶ 410 (emphasis added). ("If media differ in importance systematically across respondents [e.g. if television were most important to everyone, and everyone made only minor use of radio to acquire news and current affairs information], *then it would be misleading to weight all responses equally*.")
[670] *FCC Ownership Rules Order,* at ¶¶ 410-411 (emphasis added).

THE FCC'S INCONSISTENT RULE

Having declared its intention to use the Diversity Index to describe markets, the FCC then wrote a rule that seemed to bear only a tangential relationship to the ruler. The Court remanded the cross media limit for a very precise reason.

> Although the Commission is entitled to deference in deciding where to draw the line between acceptable and unacceptable increases in markets' diversity scores, we do not affirm the seemingly inconsistent manner in which the line was drawn. As the chart above illustrates, the Cross-Media Limits allow some combinations where the increases in Diversity Index scores were generally higher than for other combinations that were not allowed.[671]

The Court chose as an example to look at mid-size markets to demonstrate the inconsistency in the Commission's line drawing. Exhibit 1 contains the FCC's chart to which this discussion applies.

The court noted:

> Consider the mid-sized markets (four to eight stations), where the Commission found that a combination of a newspaper, a television station, and half the radio stations allowed under the local radio rule would increase the average Diversity index scores in those markets by 408 (four stations) 393 (five), 340 (six), 247 (seven) and 314 (eight) points respectively. These permitted increases seem to belong on the other side of the Commission's line. They are considerably higher than the Diversity Index score increases resulting from other combinations that the Commission permitted, such as the newspaper television combination, 242 (four stations), 223 (five), 200 (six), 121 (seven) and 152 (eight). They are even higher than those resulting from the combination of a newspaper and television duopoly – 376 (five stations), 357 (six), 242 (seven), and 308 (eight) – which the Commission did not permit. The Commission's failure to provide any explanation for this glaring inconsistency is without doubt arbitrary and capricious, and so provides further basis for remand of the Cross-Media limits.[672]

[671] *Prometheus*, at 411.
[672] Prometheus, p. 75.

Exhibit 1: FCC Analysis and Approval of Mergers
(Bold numbers represent mergers that are prohibited, non-bold number represent mergers that are allowed).

Base Case		**Average Change In Diversity Index Resulting From Mergers**				
TV Stations In Market	Average Diversity Index	Newspaper + Radio	Newspaper + 1 TV	Newspaper, + 1 TV + ½ Radio	Newspaper + 2 TV Stations	Newspaper + Radio, 2 TV Stations
1	1707	**271**	**910**	**1321**	----	----
2	1316	**335**	**731**	**1009**	----	----
3	1027	**242**	**331**	**515**	----	----
4	928	**236**	**242**	**408**	----	----
5	911	263	223	393	376	846
6	889	239	200	340	357	688
7	753	171	121	247	242	533
8	885	299	152	314	308	734
9	705	198	86	207	172	473
10	635	107	51	119	101	292
15	595	149	48	145	97	302
20	612	222	40	128	80	350

Source: Federal Communications Commission, “Report and Order,” In the Matter of 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets,” MB Docket No. 02-277, MM Dockets 02-235, 01-317, 00-244 July 2, 2003, Appendix D.

The court noted:

> Consider the mid-sized markets (four to eight stations), where the Commission found that a combination of a newspaper, a television station, and half the radio stations allowed under the local radio rule would increase the average Diversity index scores in those markets by 408 (four stations) 393 (five), 340 (six), 247 (seven) and 314 (eight) points respectively. These permitted increases seem to belong on the other side of the Commission’s line. They are considerably higher than the Diversity Index score increases resulting from other combinations that the Commission permitted, such as the newspaper television combination, 242 (four stations), 223 (five), 200 (six), 121 (seven) and 152 (eight). They are even higher than those resulting from the combination of a newspaper and television duopoly – 376 (five stations), 357 (six), 242 (seven), and 308 (eight) – which the Commission did not permit.

> The Commission's failure to provide any explanation for this glaring inconsistency is without doubt arbitrary and capricious, and so provides further basis for remand of the Cross-Media limits.[673]

CONCLUSION

As the preceding discussion clarifies, in order to appropriately respond to the *Prometheus* court's remand order, the Commission must develop a ruler that accounts for the differing importance and reach of varying media voices in a given market, and weights them accordingly. It must also develop rules that logically relate to that rule and draw lines within its ownership rule that are consistent across different markets and different media combinations. Studies that follow demonstrate a method of achieving that goal that complies with the direction of the *Prometheus* court.

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[673] Prometheus, p. 75.

STUDY 21:

BUILDING A REASONABLE MEASURE OF MARKET STRUCTURE

MARK COOPER

ABSTRACT

The United States Court of Appeals for the Third Circuit, which overturned the FCC's media ownership rules issued in 2003,The Appeals Court that overturned the new media ownership rules accepted the proposition that the FCC should analyze media market structures and measure market concentration, but it thoroughly rejected and roundly criticized the FCC's methodology. The court sent remanded the rules back to the FCC and outlined steps necessary to arrive at a reasonable result. This paper describes a methodology that rigorously implements and complies with the Court's remand.

The methodology described:

- **Places the focus is on local news and information.** Arbitron radio markets are the basic geographic market used. The product market is defined as average daily circulation for newspapers, households using television during news day-parts for TV and radio stations that list news, information, talk, or public affairs as one of their top three formats
- **Takes into account the audience size of each outlet is taken into account.** Market shares for firms are based on the *BIA Financial Database.*
- **Consistently and reasonably measures the weight of each medium is consistently and reasonably measured.** Based on media usage and importance measured by a national random sample survey of 2,000 people conducted in August 2006, the: The following weights were assigned: Newspapers = .31; Television = .32; Radio = .11; all other sources, e.g. Internet, magazines, national outlets are included and assumed to be unaffiliated, independent sources of information.

THE ANTITRUST APPROACH TO MARKET STRUCTURE ANALYSIS

For the purpose of merger analysis, antitrust officials define markets by the substitutability of products.[674] Products must be good substitutes and be readily available in a given geographic area to be included in the market. Hence, economists talk about product and geographic markets.

After the market is defined, the analyst looks at the size of the firms in the market as a first screen in assessing the likely impact of a merger. When the number of firms in a market is small, or a single firm is very large, there is a concern arises that market power can be exercised. Prices can be raised or quality reduced to increase profits through by coordinated or parallel actions among a small number of firms, or the unilateral acts of a single dominant firm.

The level of concentration is calculated by taking the market share of each firm, squaring it, then summing the result for all firms, and multiplying by 10,000 to clear the fraction.[675] Known as the "Herfindahl-Hirschman Index HHI" or HHI, this index has an

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[674] U.S. Department of Justice and the Federal Trade Commission, *Horizontal Merger Guidelines*, 1997.

[675] William G. Shepherd, *The Economics of Industrial Organization* (Englewood Cliffs, NJ: Prentice Hall, 1985), p. 389, gives the following formula for the Herfindahl-Hirschman Index (HHI):

$$H = \sum_{i=1}^{n} S_i^2 \times 10{,}000$$

where
n = the number of firms
S_i = the share of the ith firm.

The HHI is calculated based on ratios rather than percentages and the decimals are cleared by multiplying by 10,000. For ease of discussion the Court adopts the convention of describing the calculation in percentages.

easy interpretation of concentration.[676] A market that is made up of 10 equal-sized firms will have an HHI of 1000. Each firm has a 10 percent market share. Squaring the share yields 100 points for each firm, times 10 firms (10x10 x 10). A market with 5 five equal-sized firms will have an HHI of 2000 (20x20=400 x 5).

The Department of Justice considers a market with fewer than 10 equal-sized firms to be concentrated (see Exhibit XII-1). It considers a market with fewer than the equivalent of approximately 5.5-equal sized firms (HHI = 1800) to be highly concentrated. Markets with an HHI between 1000 and 1800 are considered moderately concentrated. A highly concentrated market is called a tight oligopoly.[677] A moderately concentrated market is called a loose oligopoly.

WHICH MEDIA? WHICH MARKETS?

In order to conduct market structure analysis, we the must define the market must first be defined. This is accomplished by identifying the products being analyzed and the markets in which they are available. Both sets of definitions, products and geographic areas, proved to be challenging for the FCC in the 2003 media ownership proceeding.

In analyzing a market structure for policy purposes, one of which is to assess the impact of a merger, we must describe which products to include. Products should be included if they are good substitutes for one-another. Economists look at the cross-elasticity of demand. The question is: "If the price of product increases, or its quality declines, are there substitutes to which consumers can readily switch?"

[676] The HHI can be converted to equal-sized equivalents as follows:
Equal-sized voice equivalents = (1/HHI)*10,000.
[677] Shepherd, *supra* note 2, at 4.

One of the central concerns that the D.C. Court of Appeals raised in remanding the local ownership rule in *Sinclair* was the fact that the FCC had failed to count non-broadcast outlets. The court held "that the Commission had failed to demonstrate that its exclusion of non-broadcast media from the eight voices exception 'is necessary in the public interest'." [678]

For the purposes of evaluating TV-TV mergers, the FCC did the right thing, when it did not include non-broadcast voices. But why didn't the FCC include newspapers and radios in its voice count for the rule that limited the number of markets in which one owner could hold licenses to more than one TV station (the duopoly rule)? The answer it could have given is now clear and supported overwhelmingly by the empirical evidence in the record. TV has a unique impact on politics and policy debates and all TV markets are highly concentrated. For the purposes of the *cross-media* rules, however, the Commission must count all voices.

We have described the critical characteristics of the various media in the prior discussion of media and localism. Broadcast TV and newspapers are the dominant media on which people rely for their news and information. In this analysis, we accept address the challenge of combining *types* of media and follow the road map outlined by the *Prometheus* Court. Product and geographic market definitions are inherently intertwined. For example, two newspapers are generally considered substitutable, as a product, but not if they are unavailable within a given market. We begin with an area where the *Prometheus* Court seemed to accept the FCC decision, as do we – the geographic market.

COMMERCIAL GEOGRAPHIC MARKETS

[678] *Sinclair Broadcasting, Inc. v. FCC,* 284 F.3d 148, 165 (D.C.Cir. 2002).

One of the key steps in analyzing market structure is to define the geographic scope of the market. Defining the market properly is critical because if the market is defined too broadly, producers who are assumed to be in the market, making their output available, will not actually be there.

It is well recognized that different media cover different areas. Radio signals travel smaller distances than television signals. Cable and satellite distribution expands the reach of television beyond what it the market reach available from was over-the-air distribution. However, even if a station has the right to ask for carriage in a wide area, it might not do so because it would attract few viewers outside of its area. Hagerstown, Maryland TV stations do not seek carriage on District of Columbia cable systems, even though they are in the same Designated Market Area (DMA).

We also show that while newspapers may be available in a wide area, their circulation tends to be concentrated in a *limited* geographic area. The reason is simple. By focusing on a geographic area, they are able to attract readers and advertisers who are affected by events in a specific area and are likely to shop in that area. Trying to cover very large areas would result in huge newspapers.

If the viewer/listener/reader wants to find out about the local area efficiently, he or she is likely to turn to sources that focus on that area. There is, of course, a trade- off between clutter, which imposes a cost on the consumer, and the desire of commercial entities to expand their base of users and advertisers. As the reach of the media expands, the probability that any fact or commercial establishment will be relevant to any individual user declines.

This methodological issue is an important part of the conceptual analysis. For years media owners who seek relaxation of the rules have argued that the mere *availability* of a source in an area is all that matters. They have complained that counting users for purposes of market structure analysis "penalizes success" or confuses "success with access." The *Prometheus* Court has suggested this, recognizing that the size of the audience matters a great deal.

Commercial markets are primarily defined as areas in which broadcasters sell advertising. There are two standards generally used: – Designated Market Areas (DMAs) for television and Arbitron markets for radio. There are 210 DMAs and 296 Arbitron radio markets. However, a large number of radio stations are not included in *any* Arbitron area. These "omitted" stations represent about 39 percent % of the 13,635 stations included in the BIA data base, but about 33 percent of the 1986 stations we identify as providing news or information.

The DMA as a market is larger than the Arbitron market and also larger than a typical newspaper market. In the last media ownership proceeding, the FCC created defined the market as a market somewhere in between DMA and Arbitron markets. The FCC called it the city, but then misallocated media outlets within that defined market.

The BIA database provides Arbitron areas for radio and allocates newspapers to these markets as well. But it does not actually measure *circulation* within the Arbitron area, however. Thus, a precise geographic definition of the market will remain elusive. Using the Arbitron area with papers allocated is a reasonable approach.

Exhibit 1 shows the calculations of newspaper concentration for a dozen markets based on the DMA, the Arbitron area, the city and the county. The city and county data are taken from a series of profiles that *Editor and Publisher* provided in 2001. We generally

Exhibit 1:
Concentration of Newspaper Circulation in Various Geographic Markets

	YEAR	LARGE MARKETS TYPE	HHI	SUBMARKETS TYPE	N	HHI
NEW YORK	2001	CITY	2505	COUNTY	8	4009
	2004	DMA	1678	ARBITRON	2	3612
LOS ANGELES	2001	CITY	2298	COUNTY	5	3825
	2004	DMA	2237	ARBITRON	2	3098
SAN FRAN	2001	CITY	3791	COUNTY	6	5949
	2004	DMA	2943	ARBITRON	3	3758
DALLAS	2001	CITY	2298	COUNTY	5	3825
	2004	DMA	2237	ARBITRON	2	3098
SEATTLE	2001	CITY	3743	COUNTY	5	4976
	2004	DMA	1756	ARBITRON	1	2317
CLEVELAND	2001	CITY	4819	COUNTY	5	8046
	2004	DMA	5813	ARBITRON	2	6969
ORLANDO	2001	CITY	4143	COUNTY	6	8546
	2004	DMA	3046	ARBITRON	3	7364
FRESNO	2001	CITY	5904	COUNTY	5	7427
	2004	DMA	5761	ARBITRON	2	8714
TAMPA	2001	CITY	3161	COUNTY	7	7201
	2004	DMA	2546	ARBITRON	3	5116
ATLANTA	2001	CITY	8640	COUNTY	5	8944
	2004	DMA	4263	ARBITRON	1	5250
RICHMOND	2001	CITY	8682	COUNTY	6	9221
	2004	DMA	8429	ARBITRON	1	8429
NEW ORLEANS	2001	CITY	10000	COUNTY	6	10000
	2004	DMA	7117	ARBITRON	1	9459
NORFOLK	2001	CITY	5001	COUNTY	6	9662
	2004	DMA	5206	ARBITRON	1	5693
LAS VEGAS	2001	CITY	10000	COUNTY	6	10000
	2004	DMA	7117	ARBITRON	1	9459

observe the expected relationship. The DMA is least concentrated, the city next, the Arbitron area next and the county most concentrated. The very large difference between the Arbitron and county calculations and the wider areas supports the notion that newspapers do not circulated that widely even within cities. Thus, the focus on much smaller geographic areas is justified.

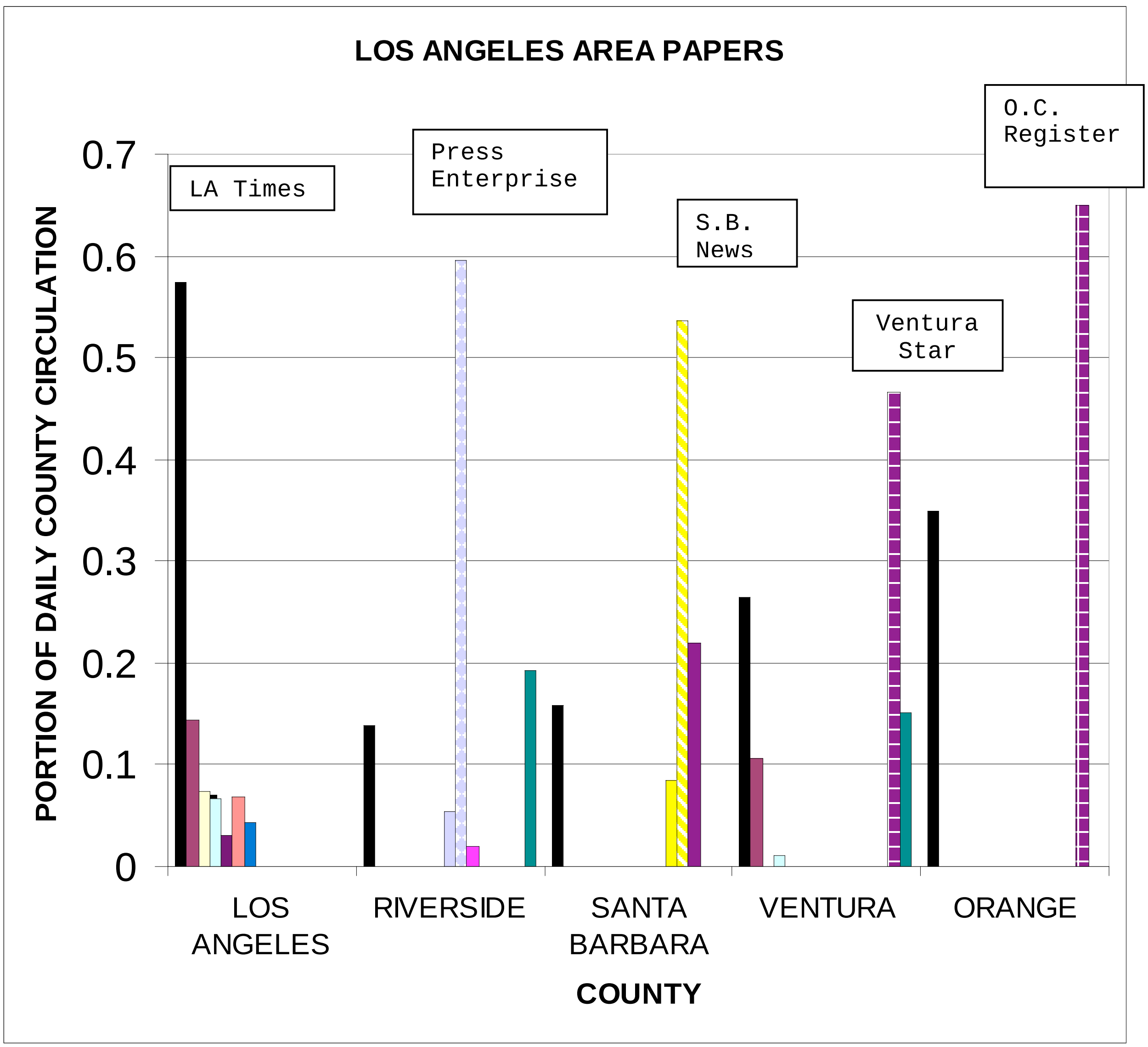
Exhibit 2 presents an analysis of the ten markets for which the FCC provided detailed analysis in the support of its 2003 the proposed rules. It shows that the Arbitron area fits the city definition that the FCC used. Thus, we believe that the Arbitron area is a reasonable geographic area for media market analysis.

Exhibit 2
Comparing FCC Cities and Arbitron-Defined Newspaper Markets

CITY	# OF Dailies		DMA	ARBITRON
	FCC	CFA	HHI	HHI
New York	12	9	1661	2174
Kansas City	6	6	6693	8239
Birmingham	2	3	3710	8160
Lancaster	1	1	2546	10000
Little Rock	3	3	5750	8545
Burlington	3	3	1666	5349
Myrtle B.	1	1	3643	10000
Terre Haute	3	4	2419	4532
Charlottesville	1	1	10000	10000
Altoona	1	2	1763	9309

Exhibit 3 shows the figures for the counties in the Los Angeles area, which is one of the least concentrated markets in the U.S. We used average daily circulation for newspapers (the Editor and Publisher and Beacon data bases). Again, we observe much higher levels of concentration at the county level.

Exhibit 3:
Local Papers Dominate Home Counties



Sources: Eileen Davis Hudson and Mark Fitzgerald, “Capturing Audience Requires a Dragnet,” *Editor and Publisher*, October 22, 2001, p. 20.

Los Angeles is used as an example because it is the third least concentrated (for newspapers) DMA in the country and the five counties identified above account for 95 percent of the households in the DMA.

As applied in this analysis, this is a conservative approach that underestimates the level of concentration somewhat for a number of reasons.

- First, we assume all TV stations in the DMA are available in every Arbitron area. That is not the case in reality.
- Second, the calculation of newspaper concentration in the Arbitron area underestimates newspaper concentration, even assuming all circulation of each newspaper is in its primary Arbitron area. The overestimate of circulation is more than offset by the larger size of the Arbitron area.

GEOGRAPHIC POLITICAL MARKETS

There is another reason to examine the issue of market definition. The commercial definition of the market is not the primary focus of this proceeding. We are concerned about the market for news and information – the forum for democratic discourse. In particular, we are concerned about the areas in which local policy decisions are made.

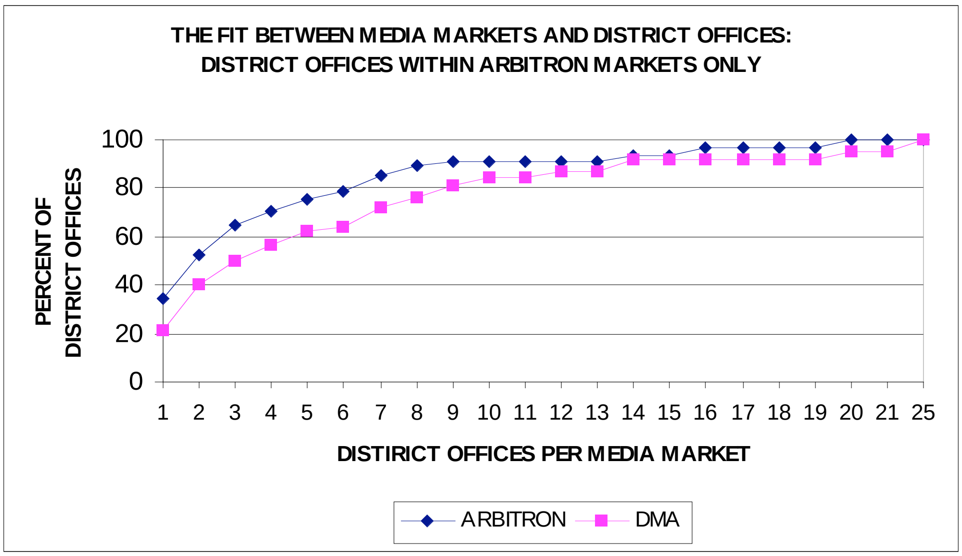
One of the most important local policy decisions is the election of representatives to the Congress. How does the political marketplace line up with the commercial marketplace?

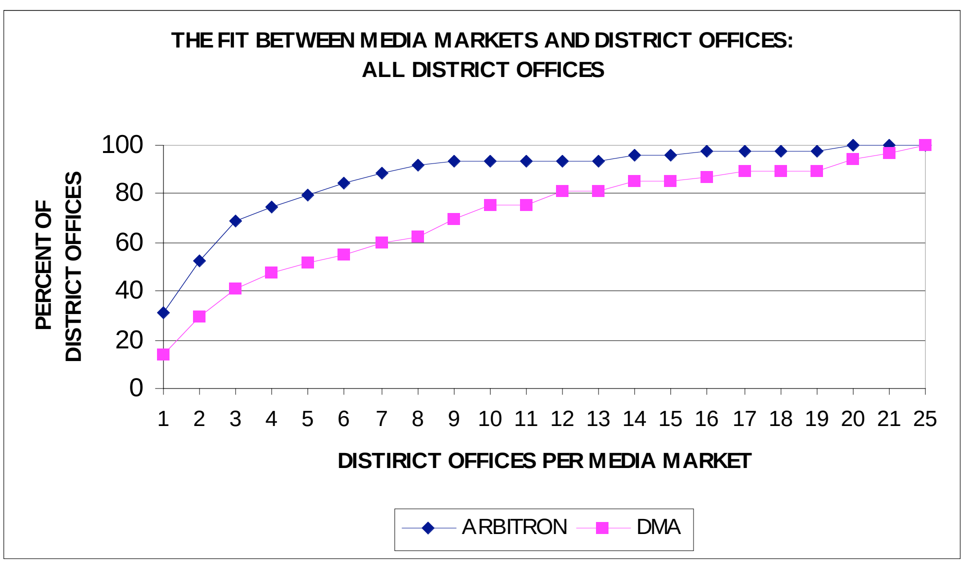
Congressional districts are drawn by state legislatures. The typical DMA is much larger than the typical congressional district. The Arbitron market is smaller than the district. This analysis shows that the Arbitron market is a better fit.

The hypothesis is that the decision of a representative about where to locate their district offices is a good indication of where the location of the political marketplace. We identified the location of over 800 district offices. These are the offices of 98 percent of all the districts.

About two-thirds of the district offices are located within a DMA and an Arbitron area (see Exhibit 4). In just over one-third of the observations there is one district office in the

Exhibit 4:
Arbitron Areas are a Better Fit for the Political Marketplace than DMAs



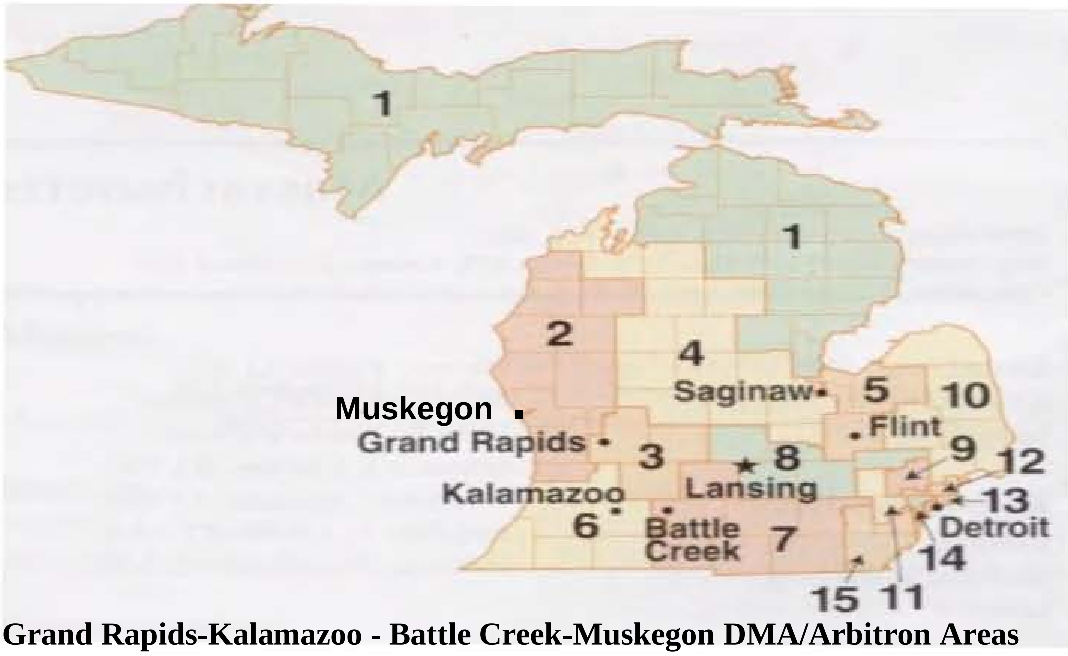


Arbitron area. Just over one half of the district offices are located in Arbitron areas with two or fewer offices and two –thirds are in Arbitron areas with three or fewer district offices. For DMAs, there are more district offices within each DMA. About one fifth of the district offices are in DMAs with only one office; 40 percent are in DMAs with two of fewer offices; 50 percent are in DMAs with three or fewer.

Treating the non-Arbitron areas as small markets, makes the difference even more pronounced. Even though these radio stations are not placed within Arbitron areas, representatives know which radio stations serve their district. In sum, Arbitron areas are a much better approximation of political markets than the DMA.

Grand Rapids, Michigan, which ranks just at the limit of the first quintile of Designated Market Areas, provides a good example of the overlap of commercial and political markets (see Exhibit 5). It is made up of 4 Arbitron areas. Each has a leading daily newspaper., with the name of the city in its title (*Grand Rapids Press, Kalamazoo Gazette, The Muskegon Chronicle, Battle Enquire).* Interestingly, one publisher – Advance – owns three of these papers. If there were no geographic specialization, it would make little sense to have separate papers. There is a similar pattern in the radio market, with a leading station in each area and a single owner holding two of the top stations. Each of these cities appears to at the heart of a Congressional District. The location of district offices of members reflects this fact.

Exhibit 5: Michigan Congressional Districts and Media Markets



Grand Rapids-Kalamazoo - Battle Creek-Muskegon DMA/Arbitron Areas

Cong. District	**Congressional Offices**	**Number of Dailies**	**Radio Stations with News Format (Non-zero share)**	**TV station Commercial Licenses**
2nd	Mukegon, Cadillllac, Holland	1	1	1
3rd	Grand Rapids	3	2	4
6th	Kalamazoo, St. Josephs	1	1	2
7th	Battle Creek, Lansing Jackson	1	1	2
Total in the DMA		6*	5**	9***

Notes: As of 2003, *Advance owned the top ranked newspaper in 3 of the four Arbitron Areas; **Clear Channel owned three of the radio stations, two of the top ranked radio stations with a news format in different Arbitron areas; ***LIN held 3 of the commercial licenses in is two of the cities and the number one and number five ranked stations. On average, eight of the nine stations are available on cable throughout the DMA.

Sources: Congress At Your Fingertips: 109th Congress, 1st Session 2005 (Capitol Advantage), p. XIV; BIA Databse.

PRODUCTS

To build a general model of media markets we have compiled data on the market shares of all TV stations, daily newspapers, weekly newspapers, and radio stations (see Exhibit 6). Following the *Prometheus* court's reasoning, the exercise of estimating the size

Exhibit 6: Constructing the Media Market Measures

<u>Media Weights:</u>

Weighted Average of first and second mentions for influence (Consumer Federation/Consumers Union Survey).

<u>Reach:</u>

Television = All channels in the DMA assumed to reach population in city.

Population reached is households using television (HUT) in early evening and late evening day parts (news day parts) from BIA Financial, *Television Market Reports:* 2003). City population from Arbitron (*Market Ranks: Spring 2004*)

HUT (news day parts) x City Population

Dailies = Average daily circulation (*Editor and Publisher Database: 2003*; *Beacons Newspapers: 2003*)

Weeklies = Average daily circulation (average weekly circulation divided by seven) (*Beacons Newspapers: 2003*)

Radio = Households using news/information/talk programming (AHQ) (Arbitron, *Radio Today: 2004*) Assumed to be atomistically competitive.

AHQ (News/Info/Talk in the region) x City Population

Internet = Assumed to be atomistically competitive.

<u>Concentration:</u>

Television = Local Commercial share (BIA Financial, *Television Market Reports:* 2003)

Dailies = Average daily circulation (*Editor and Publisher Database: 2003*; *Beacons Newspapers: 2003*)

Weeklies = Weekly circulation (*Beacons Newspapers: 2003*)

Radio = Revenue market share BIA; Assumed to be atomistically competitive.

Internet: Assumed to be atomistically competitive, 100 equal-sized voices and make-up of the local news and information market is one of identifying which sources of independent local news respondents use and which sources influence s them.

While we followed the FCC's general approach to geographic market definition, which seems reasonable,[679] unlike the FCC, which ignored the *size* of the audience of each type of product, we focus on estimating the average daily output of relevant news and information for each media firm in the market. In defining the market on an Arbitron area basis, with the household as the unit of analysis, we include the following:

- Households that use television during news- day parts on an average daily basis.
- Listeners who tune into news/talk and information channels on a routine basis.
- Daily circulation of newspapers.
- Weekly circulation of newspapers (converted to an average daily basis).

Weeklies

Weeklies provide a good example and starting point for how to proceed. We find that weeklies are a moderately influential source of local news. However, weeklies are a very targeted source of information and cover only a small set of the issues covered in dailies in a small geographic area.[680] Indeed, they may be influential precisely because they are so targeted. They deal with the micro- level detail that is directly relevant to the neighborhood or community. Because they are targeted, they are not widely circulated. They are not sold all over a city on newsstands. A city may have a hundred weeklies, but only a few are readily available to the average citizen. Thus, it is important to factor consider circulation and the

[679] 2003 Order, Appendix C.
[680] Lacy, Stephen, David C. Coulson and Hugh J. Martin, "Ownership Barriers to Entry in Non-metropolitan Daily Newspaper Markets," *Journalism & Mass Communications Quarterly* Vol.81, at 331 Summer 2004.. ("Even though weekly and daily newspapers are not perfect substitutes, research indicates that at least some readers may substitute weeklies for dailies and visa versa.")

geographic reach of the source.[681] We included all the weeklies in the DMA. This overstates the reach of weeklies, since most weeklies are only available in a restricted area. However, the small circulation, particularly when the weekly circulation is converted to daily equivalents to render it comparable to the daily reach of the other media, compensates for this.

For weeklies, we used the average circulation (from the Beacons data base), which is divided by seven to adjust to the daily basis of other media usage. Concentration ratios were calculated based on the total circulation of papers throughout the DMA.

Radio

If weeklies are the most "micro" of the local information sources, radio is likely the next most "micro." In counting radio stations, we have the added problem that the vast majority of radio stations do not do news. Many of those that do provide news simply read wire service stories. They are not independent sources of local news as defined by the *Prometheus* court.

To count radio stations in the news and information market, we included all radio stations that list news, information, talk or public service formats as one of the top three formats. We multiplied by the population of the city.

Newspapers

In contrast to radio, which is the least news intensive of the media, daily newspapers are predominantly dedicated to news and cover a wider geographic area, usually a city or county.[682] In an earlier analysis, we found that the daily newspaper circulation in large

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[681] *Id.* ("Weekly newspaper markets rarely exceed the boundaries of their home county but may be smaller than the county.")

[682] Cooper, Mark, *Media Ownership and Democracy in the Digital Information Age* (Center for Internet and Society, Stanford, 2003), pp. 127-130.

metropolitan areas tends to be highly differentiated by county. We included all circulation for all newspapers identified by BIA as located in the Arbitron area.

Broadcast Television

Since most households receive their television signals from cable or satellite and because local stations have the right to be carried, they tend to be the most "macro" medium. They are available throughout a wider area, although not all stations are available throughout the Designated Market Area (which is the unit of analysis for the television industry).

However, only about half of all local stations provide news. To compensate for this, we include all TV stations within a designated market area, but based on Nielson ratings as reported in BIA *Television Market Report*, 2003, we used households using television (HUT) in the day parts that are usually devoted to news as the base of viewers. We use the HUT figure as the average of the early evening (e.g. 4:00 pm to 6:00 pm eastern) and late evening (e.g. 11:00 pm to 11:30 pm) news- day parts. Although this implicitly assumes that all local TV stations provide news, which is not the case, in earlier analysis we have shown that the simple count of broadcasters that provide local news is close to the concentration ratio based on the viewer-based HHI. The largest firms that contribute most to the HHI are likely to be represented in each city in the DMA and they provide news.

The news- day part of HUT was multiplied by the city population. The HUT analysis includes noncommercial stations. However, market shares were based on the local commercial audience viewing- share as calculated by BIA Financial. This overestimates concentration slightly, since noncommercial stations are excluded, but their market shares are quite small.

Internet

The evidence reviewed in the preceding study of media usage and localism demonstrates that the Internet is not a significant source of local news. The Internet market was assumed to be atomistically competitive, with 100 equal-sized competitors. If ISP market share were used, the number would be closer to 10-equal sized competitors.

DESCRIBING MARKET STRUCTURE

Estimating the Units Sold

In calculating the total media market, we focus on the traditional outlets. We include all media in the denominator of the fraction. We use estimate that the traditional media make account for 91 percent of the total market (see Exhibit 7). Respondents gave the four

Exhibit 7: Media Usage

	MENTIONS		WEIGHTING APPROACH					
Medium	First	Second	(4X1)+2		(3X1)+2		(2X1)+2	
			Value	Index	Value	Index	Value	Index
Local TV	33	28	160	0.34	127	0.34	94	0.33
National TV	2	6	14	0.03	12	0.03	10	0.04
Radio	6	15	39	0.08	33	0.09	27	0.10
Internet	3	7	19	0.04	16	0.04	13	0.05
Magazines	0	1	1	0.00	1	0.00	1	0.00
Locla Daily	37	20	168	0.35	131	0.35	94	0.33
National Daily	1	2	6	0.01	5	0.01	4	0.01
Local Weekly	12	9	57	0.12	45	0.12	33	0.12
Other	2	2	10	0.02	8	0.02	6	0.02
Sum of Traditional				0.89	378	0.89	282	0.88
Adjustment	Internet			0.91		0.91		0.90
	National Owners			0.92		0.92		0.91

Source: Calculated by author, see text.

traditional media as an 87 percent of the market, calculated either as two 2 times first mention, plus a one 1 times second mention. However, several factors should be taken into account in arriving at a final total for the traditional media.

First, we should weight first mentions more than second mentions for in evaluating use. Exhibit x shows the that weighting the first response 2, 3 or 4 times the second adds 1 to 2 percentage points to the total for the traditional media.

Second, about one- fifth of the respondents who said they use the Internet said they go primarily to the web sites of local newspapers. Another fifth said they go to web sites of local TV stations. Since five percent of the respondents mention the Internet, the traditional media total should be increased by about 2 percent.

Third, we should also take account of the fact that the national media, which are cited by about 5 five percent of the respondents as a source of local news, will overlap with the local media in a significant number of cases. The four major networks are allowed to reach 39 percent of the national market. The owners of national newspapers – the New York Times, USA Today and to a lesser extent the Washington Post – own many newspapers and television stations across the country as well. To account for this, we divide the estimate of the traditional local media share by .99. The results show that the traditional media market share of the total media market is about 91 percent.

Calculating the Value of the Units Sold

The audience of each media outlet is one key element of its role in the forum for democratic discourse. This does not tell us how substitutable the different media outlets are. How does listening to a short piece on news radio stack up against reading a long piece in a daily newspaper? In the economic view, this would be the substitutability of the media. For purposes of measuring this characteristic in the forum for democratic discourse, we asked respondents how important each media type was in forming their opinions. This is the weight of the media type, which is one of the factors that in determining its role in the market.
The survey questions address the issue of the "value" of each medium in the question on influence over public opinion (see Exhibit 8). We should weight first and second responses. We also take into account the indirect effect of visiting web sites of traditional outlets. Here however, we must do it for the individual media, rather than for the total market. Based on this analysis we have assigned the following weights to the media.

TV = .33
Dailies = .32
Radio = .11
Weeklies = .10

Exhibit 8: Media Importance as a Source of Local News and Information

	MENTIONS		WEIGHTING APPROACH						WEIGHT WITH INTERNET/NATIONAL		
Medium	1st	2nd	(4X1)+2 Value	Index	(3X1)+2 Value	Index	(2X1) +2 Value	Index	(4X1)+2 Index	(3X1)+2 Index	(2X1)+2 Index
Local TV	30	30	150	0.32	120	0.32	90	0.32	0.33	0.33	0.33
National TV	6	6	30	0.06	24	0.06	18	0.06	0.06	0.06	0.06
Radio	8	15	47	0.10	39	0.10	31	0.11	0.10	0.10	0.11
Internet	4	6	22	0.05	18	0.05	14	0.05	0.05	0.05	0.05
Magazines	1	1	5	0.01	4	0.01	3	0.01	0.01	0.01	0.01
Local Daily	34	17	153	0.32	119	0.31	85	0.30	0.33	0.32	0.30
National Daily	2	2	10	0.02	8	0.02	6	0.02	0.02	0.02	0.02
Local Weekly	10	9	49	0.10	39	0.10	29	0.10	0.10	0.11	0.11
Other	2	2	10	0.02	8	0.02	6	0.02	0.02	0.02	0.02
Sum of Traditional				0.84		0.84		0.83	0.87	0.87	0.86

The remaining 14 percent of the news media market for national TV outlets, Internet, magazines and other is included in the denominator of the HHI calculation, but not in the numerators.

Note that we have taken the non-traditional media into account in both steps of the analysis. First, we calculate the number of units in the media market. The non-traditional media appear in the denominator. Then we weight those units to arrive at a market share for each outlet. Again, the non-traditional media appear in the denominator.

The real world logic is as follows. When someone buys a newspaper, they that newspaper is are counted in the media market, but a little bit less than when that person turns on the TV during a news- day part. Since weeklies come out once a week, we divide their circulation by 7, but weeklies are given only one-third the weight of TV or dailies. We count radio listeners like TV viewers (i.e. local market share for news- oriented stations), but radio is given one-third the weight of TV stations. The analogy to economic market share analysis is straightforward. We count each unit sold and multiply by the value (price) to calculate the market share.

CONCLUSION

This study lays out a defensible and rational approach to measuring geographic markets and product markets and describing market structure for the purposes of measuring concentration, that complies with the Prometheus court's remand order, It turns out, as the next study shows, that the most important factor in arriving at a reasonable picture of the local media market is to count the audience. The media weights described here, are a secondary factor.

STUDY 22:
ESTABLISHING THRESHOLDS FOR MEDIA MERGER ANALYSIS

MARK COOPER

Abstract

The paper uses standard measures of concentration from the Department of Justice and the industrial organization literature, but argues that rules establishing thresholds for media mergers must use a higher standard than traditionally applied to mergers were the sole concern is effect on competition. We start from the goals of antitrust merger policy and media policy to answer these questions. Specifying goals is essential to evaluate the impact of any changes in policy. Antitrust merger policy is a useful starting point because it is the pre-eminent area of public policy analysis of market structure and merger impacts. However, while antitrust merger policy provides the analytic tool, the Communications Act and First Amendment jurisprudence set the ultimate goals for policy to set ownership limits on media. That is because the media mergers affect involves much more than merely commercial activities; they deeply affect the nature and quality of democratic discourse in our society.

Economic policy is primarily concerned about with market power, defined as "the ability profitably to maintain prices above competitive levels for a significant period of time." Legal jurisprudence on media ownership policy has more profound concerns like the **"undue concentration of economic power,"** and an "**inordinate effect in a political, editorial or programming sense, on public opinion at the regional level."** Thus, a higher standard is appropriate for several reasons, including the following:

- Media plays a critical role in the forum for democratic discourse, which is much more important than merely commercial activities. Media policy takes a broader view than mere economics. The Supreme Court has established that the First Amendment rests upon the assumption that "The widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.," That is a much more expansive goal than preventing adverse economic impacts
- The Communications Act charges the FCC with promoting competition, localism and diversity through media policy.
- Slant or bias in reporting or attempts to manipulate the media and influence public opinion are much more difficult to project, detect and deter than price increases.
- The episodic nature of important political decisions makes "transitory" abuses a much greater concern. Elections or key votes are infrequent and public attention focuses on them for short periods of time.

For these reasons, **FCC media ownership policy should not allow mergers to create, or take place in, concentrated media markets,** as defined by the Department of Justice**.**

The previous discussion constructs the ruler for analyzing market structure and measuring market concentration. But what should the rule be? Again, we start from the antitrust practice. It should be noted that the HHI is just one statistical measure of dispersion and there are many others. The HHI has become infused with significance in antitrust because a direct conceptual link between this measure of market structure and the performance of the market can be defined.[683] The theoretical link is supported by empirical evidence.[684]

THE *MERGER GUIDELINES* CATEGORIZATION OF MARKETS

Identifying At Risk Markets

The Department of Justice considers a market with fewer than 10 equal-sized firms to be concentrated (see Exhibit 1). It considers a market with fewer than the equivalent of approximately 5.5-equal sized firms (HHI = 1800) to be highly concentrated. Markets with an HHI between 1000 and 1800 are considered moderately concentrated. A highly concentrated market is called a tight oligopoly.[685] A moderately concentrated market is called a loose oligopoly.

Shepherd describes these thresholds in terms of four-firm concentration ratios as follows:[686]

[683] Viscusi, W. Kip, John M. Vernon, and H\Joseph E. Harrington, Jr., *Economics of Regulation and Antitrust* (Cambridge: MIT Press,2001), pp. 147-149.
[684] Order, 120.
[685] Shepherd, p. 4.
[686] Shepherd, p. 4.

Exhibit 1: Describing Market Structures

Department Of Justice Merger Guidelines Concentration	Type Of Market	Equivalents In Terms Of Equal Sized Firms	Typical HHI In Media Markets	4-Firm Share
	Monopoly	1[a]	5300+	~100
	Duopoly	2[b]	3000 - 5000	~100
	Dominant Firm	4<	>2500	
		5	2000	80
High			1800	60
		6	1667	67
	Tight Oligopoly			60
Moderate				
Unconcentrated	Loose Oligopoly	10	1000	40c
	Monopolistic Competition			
	Atomistic Competition	50	200	8[c]

a = Antitrust practice finds monopoly firms with market share in the 65% to 75% range. Thus, HHIs in "monopoly markets can be as low as 4200.

b = Duopolies need not be a perfect 50/50 split. Duopolies with a 60/40 split would have a higher HHI.

c = Value falls as the number of firms increases.

Sources: U.S. Department of Justice, *Horizontal Merger Guidelines*, revised April 8, 1997, for a discussion of the HHI thresholds; See William G. Shepherd, *The Economics of Industrial Organization* (Englewood Cliffs, NJ: Prentice Hall, 1985), for a discussion of four firm concentration ratios.

> Tight Oligopoly: The leading four firms combined have 60-100 percent of the market; collusion among them is relatively easy.
>
> Loose Oligopoly: The leading four firms, combined, have 40 percent or less of the market; collusion among them to fix prices is virtually impossible.

The judicial language on the relationship between ownership and viewpoint diversity and the desire to prevent excessive economic concentration and undue influence is certainly broadly consistent with the vernacular of antitrust. However, the precise analytic link that has developed in the economics literature between the diversity outcomes and the statistical index does not exist for media. So, sufficient qualitative evidence was entered into the prior media ownership proceeding's record to convince the *Prometheus* Court of the link between ownership and diversity, leading to the Court's acceptance of the applications of the antitrust approach to media markets for purposes of diversity analysis.

Economic policy is concerned about market power. The Department of Justice (DOJ) and the Federal Trade Commission (/FTC) defines it as follows: "Market power to a seller is the ability to profitably to maintain prices above competitive levels for significant period of time… Sellers with market power also may lessen competition on dimensions other than price, such as product quality, service or innovation."

In Exhibit 1, the thresholds chosen by the DOJ/FTC are identified.

A market with an HHI of less than 1,000 – the equivalent of 10 equal-sized firms is considered unconcentrated. This corresponds to a competitive market, although atomistically competitive markets require many more competitors.

The DOJ/FTC consider a market with an HHI between 1,000 and 1,800 to be moderately concentrated.

A market with an HHI above 1,800 – the equivalent of about 5.5-equal sized firms – -- is considered highly concentrated.

Assessing the Impact of Mergers

These thresholds have been chosen based on theory, empirical evidence and experience with the exercise of market power. Mergers between firms that result in markets that are moderately or highly concentrated raise concerns.

> b) <u>Post-Merger HHI Between 1000 and 1800</u>. The Agency regards markets in this region to be moderately concentrated… . Mergers producing an increase in the HHI of more than 100 points in moderately concentrated markets post-merger potentially raise significant competitive concerns depending on the factors set forth in Sections 2-5 of the Guidelines.
>
> c) <u>Post-Merger HHI Above 1800</u>. The Agency regards markets in this region to be highly concentrated…. Mergers producing an increase in the HHI of more than 50 points in highly concentrated markets post-merger potentially raise significant competitive concerns…. it will be presumed that mergers producing an increase in the HHI of more than 100 points are likely to create or enhance market power or facilitate its exercise.

SETTING STANDARDS FOR MEDIA MARKETS

The Broader Goals of the Communications Act

How does this translate into media policy? In both spheres, competition is deemed important to prevent and discipline these abuses. The legal jurisprudence on media policy uses concepts that are similar to the idea of market power. The goal of the Communications Act is much broader in both what it seeks to promote and prevent. The Supreme Court has repeatedly ruled stated that the First Amendment “rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[687] In *Red Lion*, the seminal television case, the Court ruled that "[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount…the right of the public to receive suitable access to social, political, aesthetic, moral and other ideas and experiences…[T]he 'public interest' in broadcasting clearly encompasses the presentation of vigorous debate of controversial issues of importance and concern to the public."[688]

Limits on media ownership are based on the premise that "diversification of mass media ownership serves the public interest by promoting diversity of program and service viewpoints as well as by preventing undue concentration of economic power."[689] Moreover, "the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level."[690]

The Communications Act charges the FCC with promoting competition, localism and diversity. Indeed, economic concentration is only one of several dangers that media policy is intended to avoid. Excessive influence over public opinion, diversity and localism are additional goals. In fact, the courts have found that economic efficiency, which is at the core of antitrust policy, is a secondary concern in media ownership policy.

Thus, media ownership limits are concerned about promoting diversity of viewpoint, and preventing undue concentration of economic power and inordinate influence over public

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687 *Associated Press v. United States*, 326 U.S. 1, 20 (1945).

688 *Red Lion Broadcasting v. FCC*, 395 US 367, 390 (1969) (hereinafter *Red Lion*).

689 *FCC v. Nat'l Citizens Committee for Broadcasting*, 436 U.S. 775, 780 (1978); Prometheus *Radio Project, et al. v. FCC,* 373 F.3d 372, 383 (3rd Cir. 2004) (citing *Nat'l Citizens Committee for Broadcasting*, 436 U.S. at 780).

690 *Sinclair Broadcasting Group, Inc. v. FCC,* 284 F.3d 148, 160 (D.C. Cir. 2002) (quoting FCC's 1999 Local Ownership Order, *Review of the Commission's Regulations Governing Television Broadcasting,* Report and Order, FCC 99-209 (rel. Aug. 6, 1999)).

opinion. There are other goals of the media policy, as well, such as localism, racial or gender diversity, but this analysis focuses on the concentration issue.

Practical Considerations

That e goals of the Communications that suggest a more rigorous concentration threshold for media mergers is required, given the goals of the Communications Act, is standard are reinforced by several practical factors.

Price increases are relatively easy to see and react to. But slant or bias in reporting or attempt to manipulate the media and influence public opinion are much more difficult to detect.

The episodic nature of important political decisions makes "transitory" abuses a much greater concern. Elections are infrequent and public attention focuses on them for short periods of time. Media entities may behave well for 23 months or 47 months, but it is the brief period before an election that matters most.

Although some have argued that antitrust policy originally had purposes broader than mere economics, and should still, that is not the central concern of antitrust practice. The antitrust laws charge the Department of Justice and Federal Trade Commission with preventing harm to competition in its merger analysis, whereas the Communications Act charges the FCC with promoting the public interest in its merger review.

CONCLUSION

Therefore, although we borrow the analytic tools from economics to describe the media market structure, we believe that the thresholds of concern and the targets for concentration as applied to media mergers must be more protective of democratic discourse.

Given the greater importance of media diversity, as articulated by the Supreme Court and as embodied in the Communications Act, the larger task that competition must accomplish and the broader set of concerns that media policy must address, the FCC should use a higher standard for media mergers than the antitrust authorities apply for traditional corporate mergers. Mergers should certainly not be allowed in markets that are moderately concentrated because they pose a significant threat to the "widest possible dissemination of information from diverse and antagonistic sources."

PART IX:

THE REALITY OF LOCAL MEDIA MARKET STRUCTURE

STUDY 23:
MEDIA MARKET CONCENTRATION:
THE FCC'S ANALYSIS VS. A REASONABLE APPROACH

MARK COOPER

ABSTRACT

In 2003 when the court in *Prometheus* overturned the FCC's new media ownership rules it accepted the proposition that the Commission should analyze media market structures and measure market concentration, but it thoroughly rejected and roundly criticized the FCC's methodology. The court sent the rules back to the FCC and outlined steps necessary to arrive at a reasonable result.

In outlining the path to a reasonable method of market structure analysis, the *Prometheus* court said the FCC must weight the media in a reasonable and consistent manner, and take audience size into account when counting voices in order to avoid "absurd, illogical and unrealistic" results. Furthermore the court rightly told the FCC that the focus should be on local news and information.

This paper describes a methodology to rigorously implement the Court's ruling. First, we address the issue of proper media weights using longitudinal survey data obtained with a more appropriate survey instrument than that used by the Commission. Second, and most important, we construct a measure of market concentration that accounts for audience and use it to demonstrate the absurdity of the Commission's 2003 analysis.

In contrast to the FCC's findings that only one of the ten markets it examined is above the concentrated threshold and none are above the highly concentrated threshold, we find that all ten sample markets are above the concentrated threshold and eight of the ten are above the highly concentrated threshold.

This study presents a comparison between the FCC's analysis of media market concentration and a reasonable approach, as outlined by the *Prometheus* court. The rationale for this approach is as follows: Three Courts have told them to count voice consistently. The *Prometheus* court said the FCC must weight the media in a reasonable and consistent manner, and take audience into account in it counting of voices in order to avoid absurd results. The Court told the FCC to focus on news and information. No one fought about the market definition adopted by the FCC. This paper shows that the Court's ruling can be implemented readily and following its reasoning leads to reasonable, realistic results. There were two fundamental flaws in the FCC analysis – improper media weights and a failure to include the audience of outlets in the analysis. It turns out that the latter is far more important.

THE FCC'S UNREALISTICALLY LOW ESTIMATES OF MEDIA MARKET CONCENTRATION

Exhibit 1 shows the dramatic difference between the FCC measure of market structure and the methodology outlined in the previous study for the ten markets that the FCC studies in detail. In contrast to the FCC's findings that only one market is above the concentrated threshold and none are above the highly concentrated threshold, we find that every market is above the concentrated threshold and eight of the ten are above the highly concentrated threshold. The average HHI in the FCC analysis is just under 760. In our analysis, it is just over 2160, almost three times are high.

The extremely low levels of concentration estimated by the FCC do not reflect reality, and a glance at the details of its rankings show why. Exhibit 2 shows the rankings of the top five outlets/owners in several markets with substantial anomalies. It also shows the market share, since the magnitude of the differences is as important has the ranking.

The example that bothered the Court of “a community college television station mak[ing] a greater contribution to viewpoint diversity than a conglomerate that includes the third-largest newspaper in America” provides a reality check. The New York Times was the 23rd most important media outlet in the market, with a market share of about 1.4 percent. In our analysis the conglomerate (New York Times) is ranked in a virtual ties for second and accounts for about 13 percent of the New York media market. The community college TV station accounts for barely a speck. The ranking that results from our analysis fits reality. News Corp. with two TV stations and a major daily is ranked first (19 percent). Advance with four large northern New Jersey newspapers is ranked second, in a virtual tie with the New York Times, with the leading newspaper and a radio station. NBC/GE is ranked fourth with two TV stations. ABC with a TV station and four radio stations is ranked fifth.

New York City is not the only place where the FCC methodology produces absurd results. For example, in Little Rock, Arkansas Educational Television, with three channels, but less than one percent of news day part viewers is ranked number three, with a market share of 7.2 percent, ahead of several TV duopolies that have between 50 and 100 times the audience. The *Log Cabin Daily*, with a circulation of under 50,000 ties for second most important with the *Arkansas Democrat Gazette*, with a circulation almost three times as large. Both papers are given a market share of 6.7 percent. The highest ranked owner in Little Rock does not provide local news broadcast on its TV station or list news or information as one of its top three formats on its radio station.

In our analysis, the *Arkansas Democrat Gazette*, is ranked first with a market share of 39 percent. It is followed by the three commercial TV broadcasters that provide local news. With market shares of 5 to 20 percent. The *Log Cabin Democrat* ranks seventh with a 1.4

percent market share. The Arkansas Educational TV stations ranks eighth, with a combined market share of 0.2 percent.

We find a similar anomaly in Burlington Vermont, where public television towers over the market with a 13.5 percent market share, twice the size of the three daily newspapers, each of which has a market share of 6.7 percent. Here too, we find the anomaly within the newspaper segment, where the St. Albans Messenger is ranked equal to the *Burlington Free Press*, even though it has one-fifteenth the circulation. The highest ranked commercial TV station comes in at 8th, with a 3.4 market share. In our analysis, the *Burlington Free Press* ranks first with a market share of 34.3 percent. The leading TV station comes in second, with a share of 16.7 percent. The *Press Republican* ranks third, with a share are 14.2 percent, followed by three other TV stations with shares ranging from 5 to 9 percent. Vermont Public Television ranks seventh, with a market share of 2.7 percent.

UNDERSTANDING WHY THE FCC WENT SO FAR ASTRAY

Because the FCC must analyze the market structure – count voices – it is important to understand why it went so far astray. This section isolates the problem by systematically varying the assumptions. We show that the primary flaw, the one on which the Court rightly focused, is the failure to take the audience into account.

Exhibit 3 contrasts our media weight with those used by the FCC. In one respect, there is a strong similarity. The FCC weighted the traditional media (TV, dailies, weeklies and radio) at 0.885. We ranked these four media at 0.91. However, the weights are very different across the traditional media. The FCC gave radio a weight of 0.249. We gave it a weight of 0.11. The FCC gave dailies a weight of 0.202, we gave them a weight of 0.32. The FCC gave much more importance to the Internet that we do (0.125 versus 0.03). However, as we show below, the FCC actually got the Internet exactly backwards, assuming it made a major contribution to the concentration of media markets.

Exhibit 4 shows the critical analysis. We apply the FCC's media weights to our audience analysis, keeping all else constant (i.e. our calculation of the "eyeballs" and our treatment of the Internet). It is readily apparent that the audience is the key. Instead of an average HHI of just under 760, the HHI with audience counted and FCC weights is over 1800. This is much closer to our estimate of just over 2160. In fact, audience accounts for about three quarters of the difference between our estimate and that of the FCC. Including the audience also results in categorizing the markets similarly. Seven of the eight markets we categorized as highly concentrated are categorized as such including audience and the FCC weights. New York, which we categorized as just above the concentrated threshold (50 points above), is categorized as just below it (32 points below).

In fact, however, if the FCC had analyzed audience market shares and treated the Internet as it did, it would have come even closer to our analysis (see Exhibit 5). This is because the FCC treated the Internet in a ridiculous fashion. First, as noted above, it gave the Internet a very high weight. Second, it then assumed that the Internet was highly concentrated – a duopoly of cable and telephone companies. Thus, it rejected the notion that people could search the web for news and information. It assumed the Internet added 110 points to the HHI in every market. As a result, in New York City, for example, the Internet accounted for over one-quarter of the total HHI. In five of the cities it accounted for one-fifth to one-sixth of the total HHI. In four it account for about one-tenth. We took the opposite approach. Based on survey evidence (that focuses on local news and asked people which web sites they go to), we gave the Internet a much lower weight (about a quarter of the FCC's). We also assumed that the Internet is atomistically competitive. It made no contribution to the HHI. Rather, it deconcentrates the market. Thus, it was not included in the numerator of the fraction, but was included in the denominator.

Combining FCC weights, FCC treatment of the Internet and our audience analysis moves the estimated HHI closer together. The average HHI is over 1930, compared to our estimate of just over 2160. New York is classified as above the concentrate threshold, so nine of the ten markets are categorized similarly.

The court suggested that, following the reasoning on cable, the FCC might exclude the Internet altogether because there is little local news and information and its penetration rate is similar to that of cable. Exhibit 6 considers this possibility. It adds in two calculations – CFA weights with audience and no Internet, and FCC weights with audience and no Internet. Taking out the Internet from the denominator of the HHI has the effect of increasing the estimated concentration. In the case of the FCC, this effect is larger than the assumption that the Internet was concentrated. We end up with perfect agreement, as the HHIs are both just above 2300. Every market is categorized similarly. We believe that the Internet should be included, but that it should be given its proper weight and assumed to deconcentrate markets.

CONCLUSION

Exhibit 6 also underscores the critical finding of this analysis. Measuring the audience is the key to a realistic assessment of media market structure. This should not be surprising, as market share has been at the core of the analysis of market structure. The *Prometheus* Court used very harsh words to describe the FCC's approach and deservedly so. For the FCC to claim to be measuring media market concentration or analyzing media market structure led to results that were, in the *Prometheus* court's words absurd, illogical and unrealistic.

Exhibit 1:
FCC V. CFA Base Cases

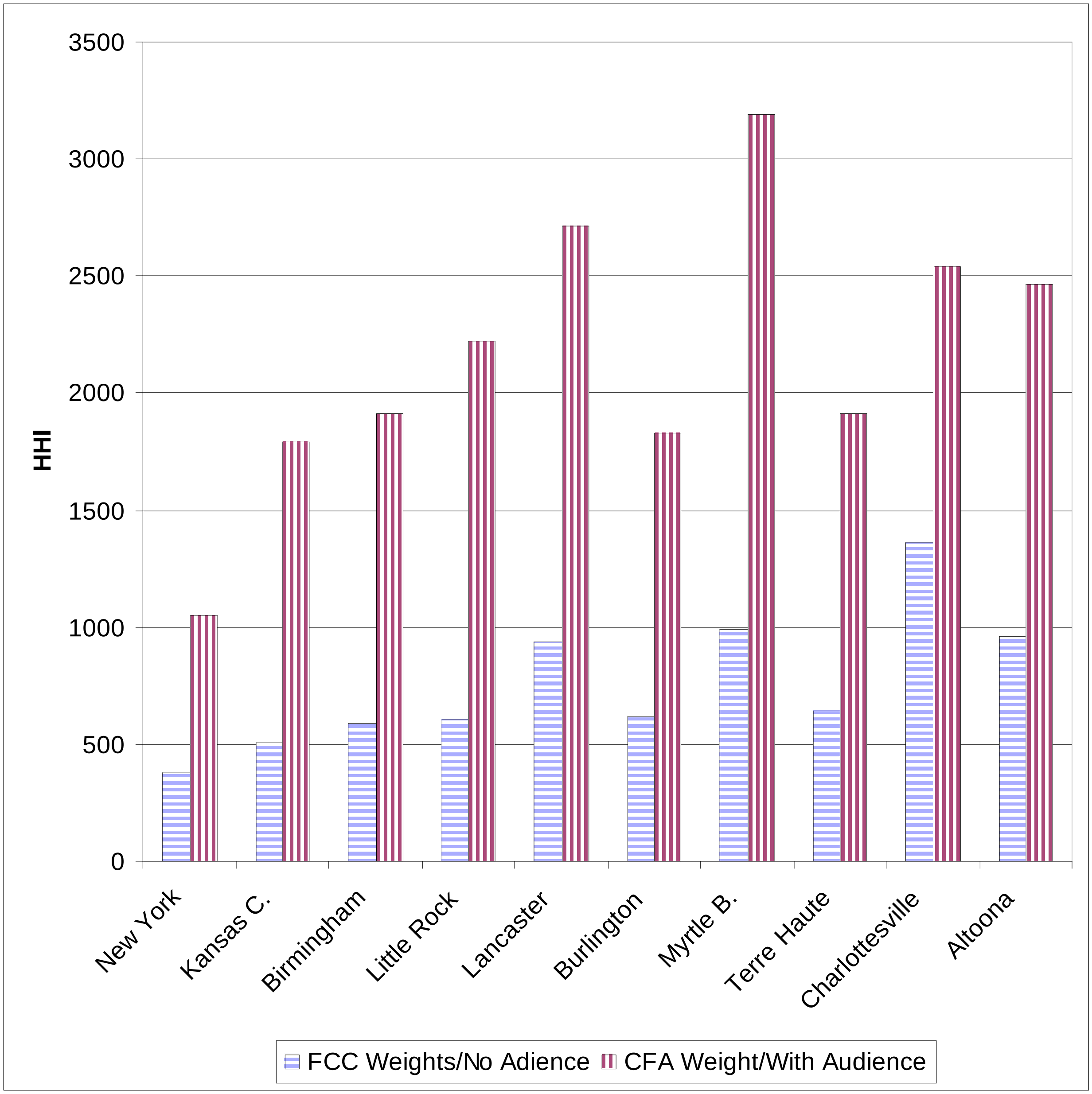


Exhibit 2:
Absurd Rankings in Individual Cities

CITY	FCC RESULTS Rank/Owner	Market Share	CFA RESULTS Rank/Owner	Market Share
NEW YORK NY				
	1. Gannett	5.8	1. News Corp.	19.3
	2. Univision	5.2	2. Advance	13.6
	3. Viacom	4.0	3. New York Times	13.1
	4. Advance	3.9	4. NBC	10.6
	5. News Corp.	3.9	5. ABC	9.6
	14 (tie) Dutchess County Public TV	1.5		
	27. New York Times	1.4		
			Dutchess County Public TV	~ 0
LITTLE ROCK AR				
	1. Equity	5.8	1. Arkansas Democrat	39.2
	2. Morris	7.7	2. Albritton	19.5
	3. Arkansas Ed. TV	7.2	3. Gannett TV	12.2
	4. (tie) Arkansas Democrat	6.7	4. Nextstar (TV)	10.5
	4. (tie) Denton Caourier	6.7		
	4. (tie) Log Cabin Dem.	6.7		
			7. Log Cabin Dem	1.4
			8. Arkansas Ed. TV	.2
			Equity	~ 0
BURLINGTON VT.				
	1. Vermont Public TV	13.2	1. Burlington Free Press	34.3
	2. Burlington Free après	6.7	2. Mount Mansfield TV	16.7
	3. Press Republican	6.7	3. Press Republican	14.2
	4. St Albans Messenger	6.7	4. Heart Argyle TV	9.6
			7. Vermont Public TV	2.7
			8. St. Albans Register	2.3

Exhibit 3:
Media Weights

MEDIUM		
TV	**33.8**	**33**
DAILIES	**20.2**	**32**
WEEKLIES	**8.5**	**10**
RADIO	**24.9**	**11**
TRADITIONAL SUBTOTAL	**88.5**	**86**
INTERNET	**12.5**	**3**
OTHER	**NA**	**11**

Exhibit 4: FCC V. CFA With Audience in Both

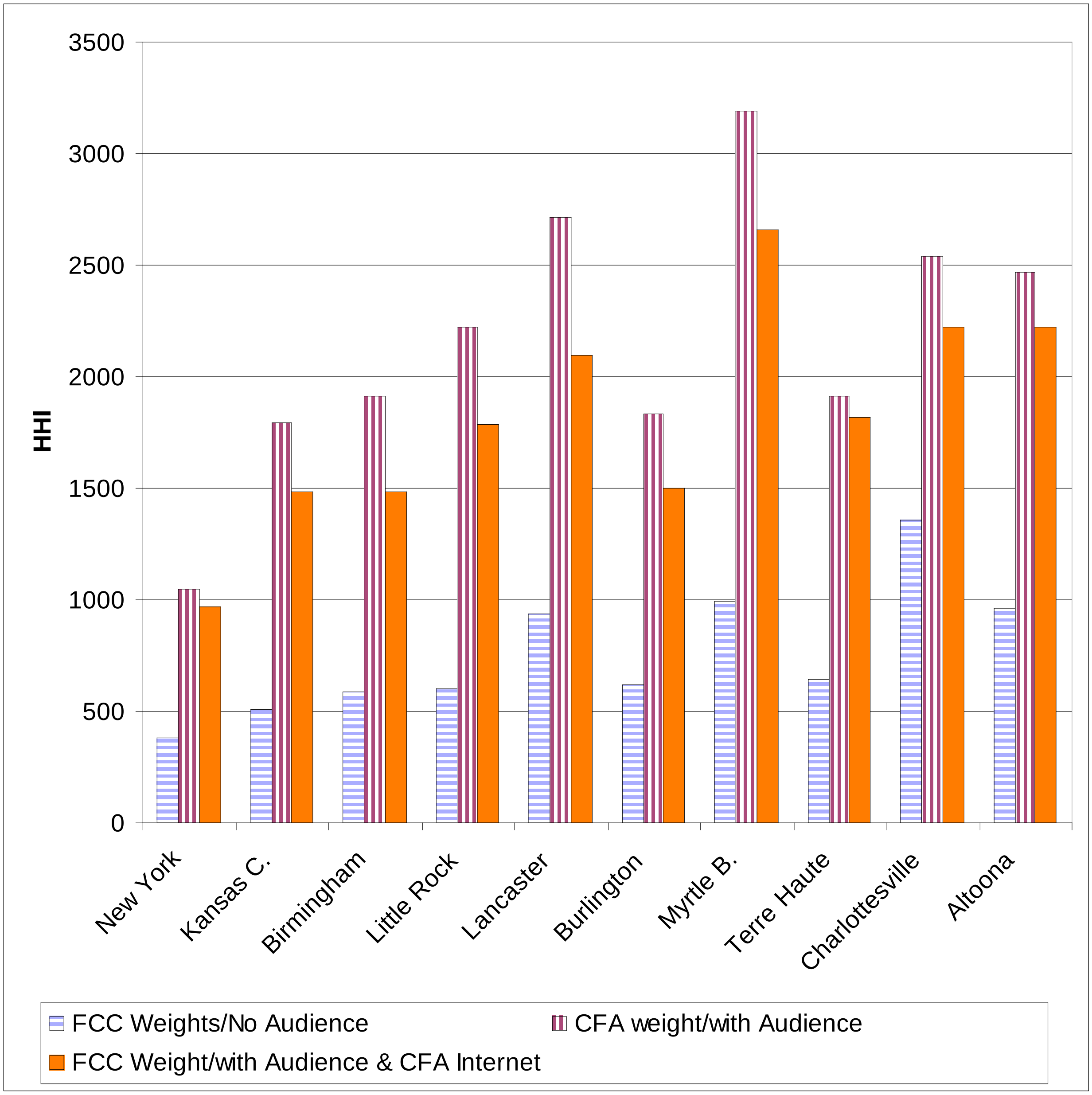


Exhibit 5: FCC V. CFA With Audience in Both and FCC Internet

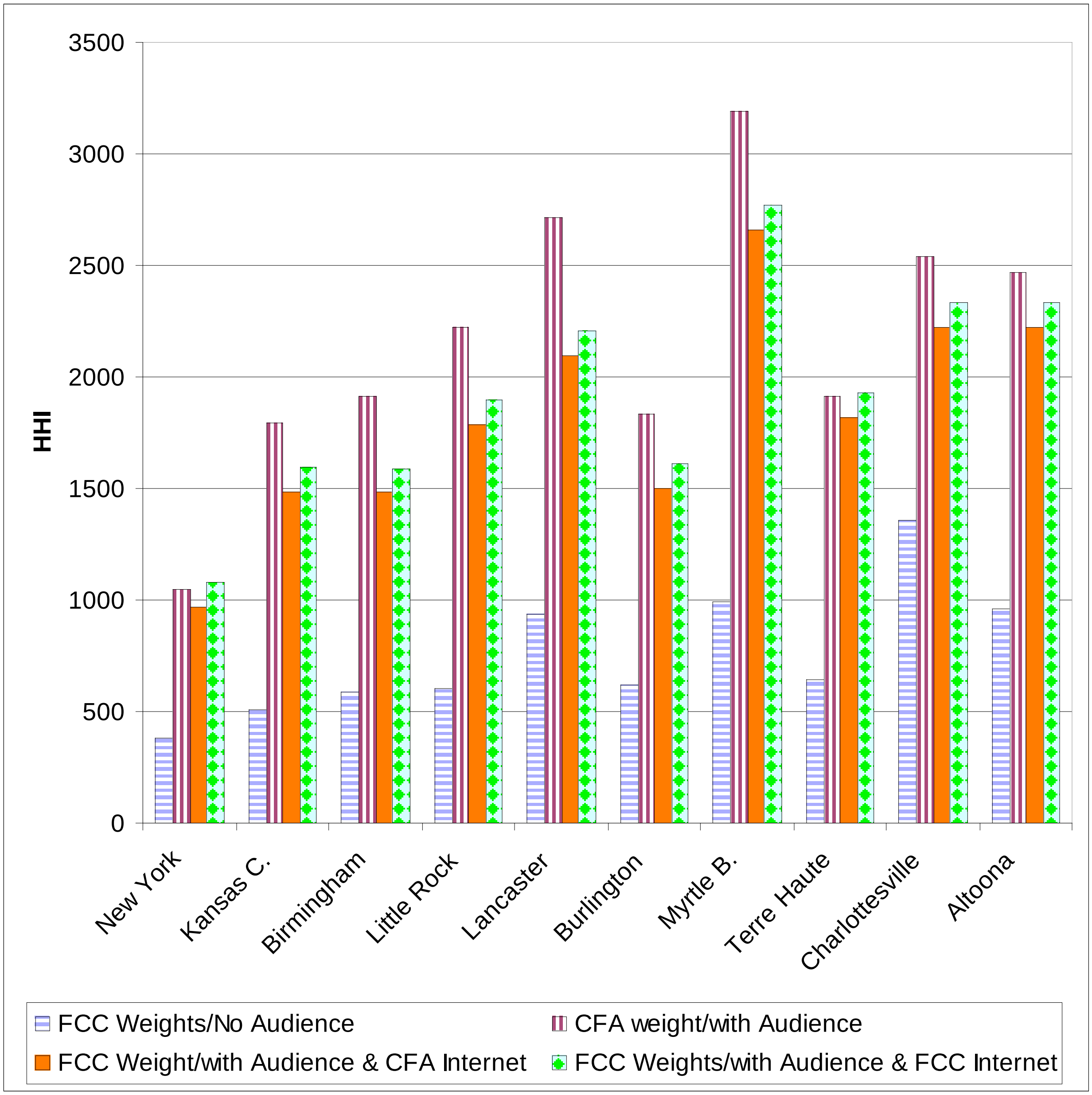
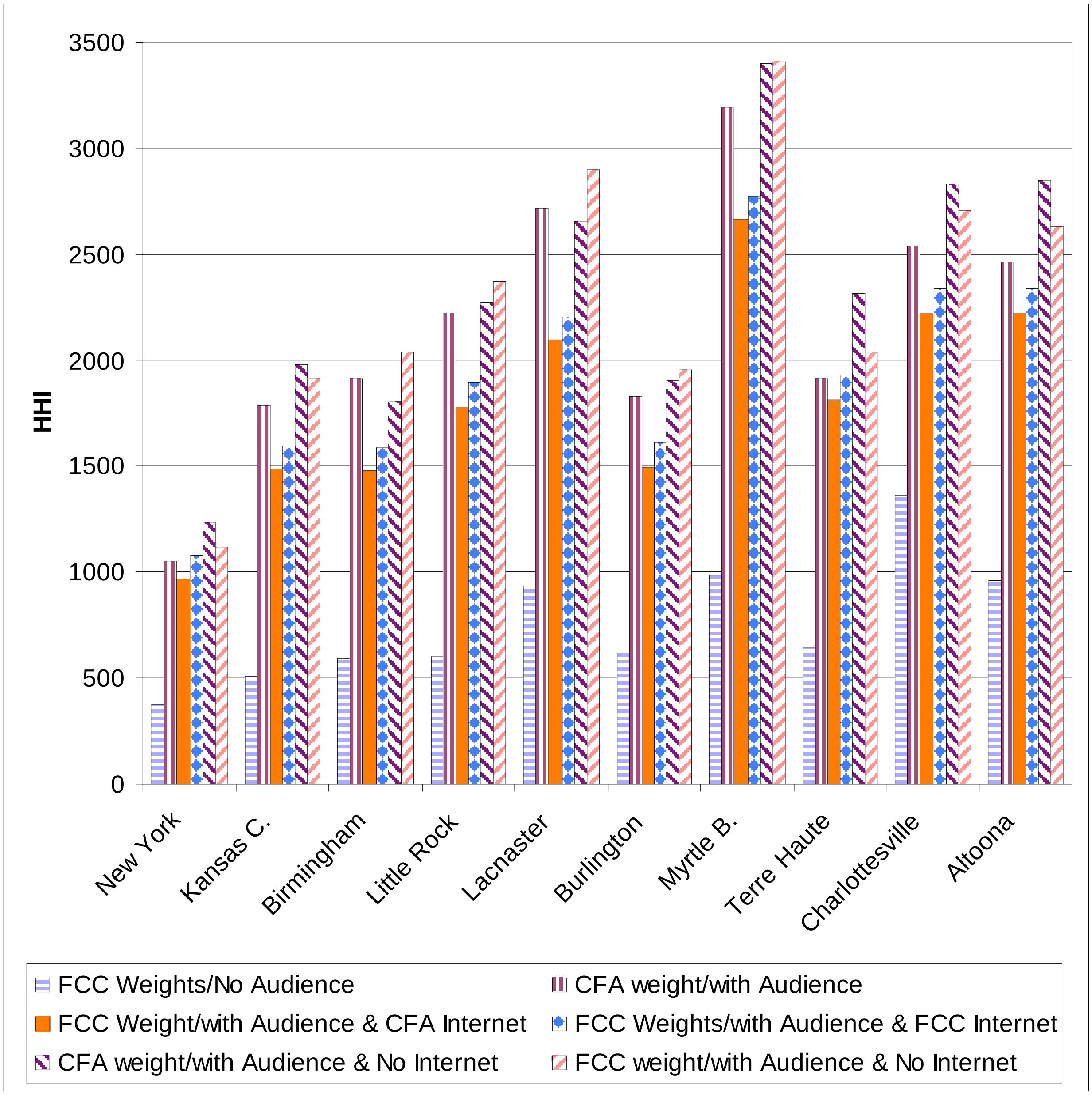


Exhibit 6: FCC V. CFA With Audience in Both, Internet Excluded



STUDY 24:
THE IMPACT OF LIFTING THE NEWSPAPER-TV CROSS-OWNERHSIP BAN ON FCC SAMPLE CITIES

MARK COOPER

ABSTRACT

How big the media gets matters to our democracy at all levels of government, including the local level. The Supreme Court has long held that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the public welfare."

Broadcast licenses give their holders powerful public voices that are not available to every citizen. They pose a challenge in a society whose democracy relies on vigorous debate over public policy and social issues. The Courts have long accepted limitation on ownership of media outlets by those who hold broadcast licenses as "a reasonable means of promoting the public interest in diversified mass communications."

Further, localism is important because of our federal system of government that elects representatives on a local basis and places a great deal of emphasis on local policy for critically important issues – like public safety and education. Localism remains vital in media policy because citizens rely overwhelmingly on traditional outlets for information – local television stations and daily newspapers.

This study examines what would happen if the largest newspapers and television stations got even bigger by merging. These situations could become a reality if the Federal Communications Commission relaxes a cross-ownership prohibition currently under consideration. The study uses a methodology that reflects the recent court ruling that overturned the FCC the last time the agency attempted to relax media ownership limits.

This study analyzes each market to answer three key questions. First, we measure how concentrated the ownership of media channels is today across each of the major media (newspapers, radio, and TV) and across the overall market of all media channels. Second, we measure how concentrated the market would become if cross-media mergers were permitted, i.e. the newspaper owner bought the largest TV station. Finally, we compare the levels of concentration today and the levels of concentration after a merger to standard measures of competition. The standards in the Department of Justice *Merger Guidelines* are used to determine the effects of possible mergers on the market for news and information in those cities. We also examine the percentage of the audience (market share) controlled by the largest company in a given city, as well as the market share controlled by the top four firms in the media market (e.g. the top four radio stations). This measure shows us whether or not a market is an oligopoly, i.e. a small number of firms control most of the market share.

The results are stark. We find that citizens generally already face highly concentrated markets with few choices of news and views. Possible mergers would only make matter worse, risking both localism and democracy. Even in the least concentrated markets, any cross media merger involving the top two firms would increase concentration in excess of the Department of Justice and Federal Trade Commission *Merger Guidelines.* In the smaller markets, the outlook is even worse.

BACKGROUND ON THE STUDY

HOW DO WE DETERMINE WHETHER A LOCAL MEDIA MARKET IS "CONCENTRATED"? WHEN DOES A MERGER INCREASE CONCENTRATION "TOO MUCH"?

GOALS

We start from the goals of antitrust merger policy and media policy to answer these questions. Specifying goals is essential to evaluate the impact of any changes in policy. Antitrust merger policy is a useful starting point because it is the pre-eminent area of public policy analysis of market structure and merger impacts. However, while antitrust merger policy provides the analytic tool, the Communications Act and First Amendment jurisprudence set the ultimate goals for policy to set ownership limits on media because the media involves much more than merely commercial activities; they deeply affect the nature and quality of democratic discourse in our society.

What are the goals of antitrust analysis? The goal of the antitrust laws is to protect competition. In a merger review, the Department of Justice and Federal Trade Commission (DOJ/FTC) try to prevent the creation or exercise of market power, which "is the ability profitably to maintain prices above competitive levels for a significant period of time… Sellers with market power also may lessen competition on dimensions other than price, such as product quality, service or innovation market power,"[691]

What are the goals of media policy? The goal of the Communications Act is much broader in both what it seeks to promote and prevent. The Supreme Court has repeatedly ruled that the Communications Act "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the

[691] Department of Justice/Federal Trade Commission, *Merger Guidelines* (1997).

public."[692] In *Red Lion*, the seminal television case, the Court ruled that "[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount…the right of the public to receive suitable access to social, political, aesthetic, moral and other ideas and experiences…[T]he 'public interest' in broadcasting clearly encompasses the presentation of vigorous debate of controversial issues of importance and concern to the public."[693]

Limits on media ownership are based on the premise that "diversification of mass media ownership serves the public interest by promoting diversity of program and service viewpoints as well as by preventing undue concentration of economic power."[694] Moreover, "the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level."[695]

Thus, media ownership limits are concerned about promoting diversity of viewpoint, and preventing undue concentration of economic power and inordinate influence over public opinion. There are other goals of the media policy, as well, such as localism, racial or gender diversity, but this analysis focuses on the concentration issue.

STANDARDS

What is a concentrated market? The Department of Justice and Federal Trade Commission analyze markets on the basis of the market share of the firms that sell products in

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[692] *Associated Press v. United States*, 326 U.S. 1, 20 (1945).

[693] *Red Lion Broadcasting v. FCC*, 395 US 367, 390 (1969) (hereinafter *Red Lion*).

[694] *FCC v. Nat'l Citizens Committee for Broadcasting*, 436 U.S. 775, 780 (1978); Prometheus *Radio Project, et al. v. FCC,* 373 F.3d 372, 383 (3rd Cir. 2004) (citing *Nat'l Citizens Committee for Broadcasting*, 436 U.S. at 780).

[695] *Sinclair Broadcast Group, Inc. v. FCC,* 284 F.3d 148, 160 (D.C. Cir. 2002) (quoting FCC's 1999 Local Ownership Order, *Review of the Commission's Regulations Governing Television Broadcasting*, Report and Order, FCC 99-209 (rel. Aug. 6, 1999)).

the market. They use the Herfindahl-Hirschmann Index (HHI) to analyze markets on the basis of the market shares of firms. When there are fewer than the equivalent of 10 equal sized competitors (an HHI of 1000), the market is considered concentrated. For the DOJ, mergers that increase concentration in these markets by as little as little as 10 percent (100 points) "raise significant competitive concerns." At this level of concentration, markets are considered oligopolies. Markets with the equivalent of 5.5-equal sized firms (HHI of 1800) are considered highly concentrated and mergers that increase concentration by as little as 3 percent (50 points) are deemed to be "likely to create or enhance market power."

Market structure is also frequently described in terms of the combined market share of the top four firms in the market. When the top four firms have more than 40 percent of the market, the market is considered to be an oligopoly.[696] When the top four firms have more than 60 percent of the market, it is considered a tight oligopoly.

For the purpose of this analysis, we focus on market structure.[697] We describe media markets in terms of the basic antitrust thresholds – whether they are concentrated or oligopolies and whether mergers would increase concentration in excess of the *Merger Guideline* standard. Of course, many believe that because media ownership affects democratic discourse so profoundly, the standard should be even higher. Moreover, there is no guarantee that competitive markets achieve the other goals of the Communications Act, such as localism, or ensuring minority ownership.

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[696] William G. Shepherd, *The Economics of Industrial Organization* (Englewood Cliffs, NJ: Prentice Hall, 1985), p. 4.

[697] See Mark Cooper, *Building a Reasonable Measure of Media Market Structure* (McGannon Communications Research Center, Fordham University, 2006).

METHOD

To analyze whether local news and information sources are concentrated, we first calculate the market share of the firms in a particular market. For daily newspapers, we count the circulation of all the daily newspapers sold in the area and calculate what percentage of the total each paper gets. We do the same for weeklies and calculate an average daily circulation. For TV, things are slightly more complicated, since news is only a small part of what they do. Here we look at the ratings of each TV station during the news day parts. For radio, we count only those stations that list news, information, public affairs or talk as one of their top three formats.

What is the market we are talking about? TV broadcast signals can cover a large area, especially when they are distributed over cable systems. Radios cover a much smaller area. Newspapers tend to have circulation concentrated within a small area, which is why they have the name of a city or county in their title. Weeklies generally serve even smaller areas. Economists refer to this as defining the geographic market. This analysis uses the radio market (Arbitron), which is generally associated with cities, as the basic market. It includes the daily and weekly newspapers that are based in that market and all the TV stations available in the area (Designated Market Area). Other types of media such as the Internet and magazines are included as well, but the merger analysis focuses on newspapers and TV.

How do we compare and combine different media in a market to determine market concentration? How does the daily circulation of the newspaper compare to the average daily viewership of news shows? Do people substitute one for the other? Even if they do, does a short spot on the TV morning news have the same impact as a long piece in the morning paper? Weights in this study are based on survey evidence about which media influence public opinion. The evidence shows that the most important sources for local news and information are local TV stations and local daily newspapers, followed by radio and weeklies. The survey reveals the relative importance,[698] or "weight," that the public places on these local news sources, as follows: Television = .33, Newspapers = .32, Radio = .11, Weeklies = .10.

Market shares for the purpose of estimating market concentration are then measured as follows:

WITHIN MEDIA = AUDIENCE

ACROSS MEDIA = AUDIENCE X WEIGHT.

Which Cities are analyzed? This study focuses on the ten sample cities that the FCC chose to be representative of the nation. The subsequent studies focus on states. To assess the current status of local media markets and the potential impact of lifting the cross media ban, we have analyzed three cities in the state to cover the range of possibilities: the largest city in the state; the smallest city in the state in which cross-ownership would be allowed under the FCC rules, and the state capitol, which plays a special roll in policymaking in the state.

What potential mergers were analyzed? We focus on newspaper-TV mergers. The FCC's rules that were remanded gave "no questions asked" approval to all mergers in all markets where minimal safe harbor conditions held. Under these circumstances and given market pressures, we would expect each of the major firms to try to build the biggest conglomerate possible.

[698] See Mark Cooper, *Media Usage: Traditional Outlets Still Dominate Local News and Information* (Washington, D.C.: Media and Democracy Coalition, 2006).

To model the potential impact of the green-lighted merger, we consider two scenarios. In the 1st + 1st scenario, the largest firm merges with the largest available cross media firm. The 2nd largest unmerged firm merges with the second largest cross media firm etc. In the 1st + 2nd scenario the mergers are flipped. The largest firm is assumed to merge with the second largest cross media firm available, while the second largest firm mergers with the largest cross media firm available. In both cases, where the largest firm already owns a newspaper and a TV station, we assume it buys a second or third TV station. We assume mergers take place until all significant daily newspapers have merged with TV stations (papers with more than 5 percent of the total market).[699] Under a "no questions asked" approach, there is nothing the agency could do to stop the merger wave. We do not consider additional TV-TV mergers, which also would have been allowed by the FCC's remanded rules and would concentrate markets even more.

Why do you analyze mergers that could happen? There are several reasons. First, when a major change in ownership rules is proposed that could fundamentally alter market structure, it is irresponsible to not examine what could happen.

Second, the experience over the last decade with similar changes suggests substantial merger activity will take place.[700] In less than a decade after the repeal of the Financial and Syndication Rules, the broadcasters went from owning about one-fifth of the shows in prime time to four-fifths. In less than a decade after the lifting of the national cap on radio, the top

[699] We assume that the largest merger in each scenario takes place first and only the top two mergers are flipped in the second scenario.

[700] These trends are analyzed in Mark Cooper, *Media Ownership and Democracy in the Digital Information Age* (Palo Alto, Stanford Law School Center for Internet and Society, 2003) Chapter VI.

four firms went form owning about 160 stations to owning over 2,000. In less than a decade after the relaxation of the duopoly rule, over 75 duopolies were created.

Third, in looking at media outlets, it is clear that many properties would be in play. The TV stations that are not owned and operated by the major networks would certainly be targets. Properties owned by Tribune, Belo, Hearst, Media General and Fox would be in play, since all of the parent corporations are already in both the TV and the newspaper business. Only the network-owned and operated stations (O&O's) in the largest markets might be more difficult acquisition targets. However, with increased pressure from a wave of combinations, these stations too might find it hard to resist assimilation into a cross-owned enterprise.

Fourth, many of the mergers could take place by swapping properties, rather than with buyouts. This would diminish the amount of cash that would be needed to make the deals.

Finally, the issue of mergers and major structural changes in media markets that they could cause is a long-term concern. The question is not which mergers will take place the week, month or year after the policy change, but how it will evolve over a period of years.

In summary, the possibility that a substantial amount of merger activity would take place is high. It is incumbent upon policymakers and the public to understand what could happen in these very important markets.

RESULTS

This paper describes the impact of the merger scenarios on the cities that the FCC studied in detail in its Media Ownership Order. Exhibit 1 shows the current status of the media markets in terms of the HHI and four firm concentration ratios. Exhibit 2 shows the impact of the mergers on media markets in terms of the increase in the Department of Justice/Federal Trade Commission (DOJ/FTC) market-wide concentration index (HHI) and the market shares of the dominant firms, i.e. how the merger increases the market share controlled by one company in a single city. Exhibit 2 also summarizes the effects of both merger scenarios in terms of the *Merger Guidelines* and leading firm market shares.

New York City

Current Status: As shown in Exhibit 1, in New York the HHI for newspapers and radio is well into the highly concentrated range. TV is concentrated. The overall market is just below the concentrated threshold. The largest four firms in each of the individual media have a market share of 75 percent to over 90 percent, making them all tight oligopolies. For the overall media market, the four firm concentration ratio is below 60 percent. Thus, when we combine all of the media outlets into a combined media market, we find that the overall market is right at the edge of the danger zone of concentration and tight oligopoly...

Impact of Mergers: Even in New York, the largest market in the country and one of the least concentrated, any cross media merger involving the top newspaper and TV firms would increase concentration in excess of the DOJ/FTC *Merger Guidelines.* As shown in Exhibit 2, under both of the scenarios considered, New York would become a concentrated, tight oligopoly, with the HHI rising from just over 1000 to just over 1900. The four firm concentration ratio would increase from under 60 percent to 80 percent.

EXHIBIT 1: CURRENT STATUS OF MEDIA MARKETS

CITY	DOJ/FTC HHI				FOUR FIRM CONCENTRATION			
	Papers	TV	Radio	Combined	Papers	TV	Radio	Combined
New York	1937	1786	3053	1050	83	77	95	54
Kansas City	7121	2440	5709	1790	90	95	100	75
Birmingham	7989	1897	3639	1914	99	80	100	70
Little Rock	7988	2951	10000	2221	99	100	100	82
Lancaster	9506	3335	3141	2717	100	89	100	84
Burlington	5070	2792	10000	1831	99	98	100	75
Myrtle Beach	9120	5103	10000	3192	100	100	100	87
Terre Haute	4532	4356	1000	1912	99	100	100	81
Charlottesville	9983	3967	5458	2538	100	98	100	87
Altoona	1000	3883	8384	2466	100	100	100	91

EXHIBIT 2: IMPACT OF NEWSPAPER/TV MERGERS

City/Scenario	Market HHI		Post Merger Status	Merger Guidelines Threshold		Leading Firm Market Share			
	Before	After		1st Merger	2nd Merger	CR4		Top Firm	
						Before	After	Before	After
New York									
1 + 1 Scenario:	979	1923	Highly Concentrated	Violated	Violated	57%	80%	19%	29%
1 + 2 Scenario:	979	1911	Highly Concentrated	Violated	Violated	57%	80%	19%	29%
Kansas City									
1 + 1 Scenario:	1791	3022	Highly Concentrated	Violated	Violated	75	85	33%	51%
1 + 2 Scenario:	1791	2765	Highly Concentrated	Violated	Violated	75	85	33%	47%
Birmingham									
1 + 1 Scenario:	1914	2887	Highly Concentrated	Violated	Violated	70%	80%	38%	50%
1 + 2 Scenario:	1914	2847	Highly Concentrated	Violated	Violated	70%	80%	38%	50%
Little Rock									
1 + 1 Scenario:	2221	3266	Highly Concentrated	Violated	Violated	82%	89%	39%	59%
1 + 2 Scenario:	2221	3810	Highly Concentrated	Violated	Violated	82%	89%	39%	51%
Lancaster									
1 + 1 Scenario:	2717	4723	Highly Concentrated	Violated	Violated	84%	89%	45%	68%
1 + 2 Scenario:	2717	3635	Highly Concentrated	Violated	Violated	84%	89%	45%	56%
Burlington									
1 + 1 Scenario:	1831	3260	Highly Concentrated	Violated	Violated	75%	85%	34%	51%
1 + 2 Scenario:	1831	2971	Highly Concentrated	Violated	Violated	75%	85%	34%	44%
Myrtle Beach									
1 + 1 Scenario:	3192	5869	Highly Concentrated	Violated	Violated	90%	90%	48%	76%
1 + 2 Scenario:	3192	4274	Highly Concentrated	Violated	Violated	90%	90%	48%	59%

EXHIBIT 2: IMPACT OF NEWSPAPER/TV MERGERS (continued)

City/Scenario	Market HHI Before	Market HHI After	Post Merger Status	Merger Guidelines Threshold 1st Merger	Merger Guidelines Threshold 2nd Merger	Leading Firm Market Share CR4 Before	CR4 After	Top Firm Before	Top Firm After
Terre Haute									
1 + 1 Scenario:	1912	3623	Highly Concentrated	Violated	Violated	81%	89%	32%	53%
1 + 2 Scenario:	1912	3466	Highly Concentrated	Violated	Violated	81%	89%	32%	49%
Charlottesville (These Mergers would not be allowed because there are fewer than four TV stations)									
1 + 1 Scenario:	2538	4794	Highly Concentrated	Violated	NA (one Daily)	87%	90%	37%	68%
1 + 2 Scenario:	2538	3559	Highly Concentrated	Violated	NA (one daily)	87%	90%	37%	51%
Altoona									
1 + 1 Scenario:	2466	4305	Highly Concentrated	Violated	NA (one daily)	91%	91%	36%	62%
1 + 2 Scenario:	2466	4068	Highly Concentrated	Violated	NA (one daily)	91%	91%	36%	57%

The change in the New York Market that would result from a wave of newspaper-TV mergers is extremely troubling. In the current situation we find a leading firm and a handful of smaller, but closely matched competitors. Cross-media mergers would allow a small group of firms to dominate. The top three firms could increase their market share from just under one-third of the market to over two-thirds. The remaining firms in the market would be much smaller. If the dominant firms added more TV stations to their holdings, which would be allowed under the FCC approach, the situation would become even more dangerous.

Kansas City

Current Status: As shown in Exhibit 1, in Kansas City the HHI for all the media is well into the highly concentrated range. The overall market is just below the highly concentrated threshold. The largest four firms have in each of the individual media has a market share of 90 to 100 percent, making them all tight oligopolies. For the overall media market, the four firm concentration ratio is just below 75 percent. Thus, when we combine all of the media outlets into a combined media market, we find a tight oligopoly, close to the highly concentrated threshold.

Impact of Mergers: Any cross media merger involving the top newspaper and TV firms would increase concentration in excess of the DOJ/FTC *Merger Guidelines.* As shown in Exhibit 2, under both of the scenarios considered, Kansas City would become a highly concentrated, tight oligopoly, with the HHI rising from just under 1800 to over 2500.   The four firm concentration ratio would increase from 75 percent to 85 percent.

The leading firm would increase its market share from one-third of the market to about one-half. The number two firm would be about one- third the size of the dominant firm. If the dominant firms added more TV stations to their holdings, which would be allowed under the FCC approach, the situation would become even more dangerous.

Birmingham

Current Status: As shown in Exhibit 1, in Birmingham the HHI for newspapers and radio is well into the highly concentrated range. TV and the overall market are highly concentrated, as well, although closer to the threshold. The largest four firms in each of the individual media have a market share of 80 percent to 100 percent, making them all tight oligopolies. For the overall media market, the four firm concentration ratio is 70 percent, making it a tight oligopoly as well.

Impact of Mergers: Any cross media merger involving the top newspaper and TV firms would increase concentration in excess of the DOJ/FTC *Merger Guidelines.* As shown in Exhibit 2, under both of the scenarios considered, Birmingham suffers a major increase in concentration, with the HHI rising from just over 1900 to just almost 2900. The four firm concentration ratio increases from 70 to 80 percent. The leading firm grows from 38 percent to 50 percent. The second ranked firm would be less than one half the size. If the dominant firms added more TV stations to their holdings, which would be allowed under the FCC approach, the situation would become even more dangerous.

Little Rock

Current Status: As shown in Exhibit 1, the HHI for each individual media outlet indicates a highly concentrated market. The combined media market is highly concentrated as well. Exhibit 2 shows the largest four firms have a combined market share of 90 percent to 100 percent, making them all tight oligopolies. When we combine all of the media outlets into a combined media market, we find that the overall market is highly concentrated and a tight oligopoly.

Impact of Mergers: As shown in Exhibit 2, under both of the scenarios considered, allowing cross-ownership in this market would have a large impact, with the HHI rising from about 2200 to a range of 3200 to 3800, an increase of 1000 - 1600 points.

The four firm concentration ratio increases from 82 to 89 percent. The leading firm's market share would rise from just under 40 percent to almost over 50 percent if cross-ownership were allowed. The second ranked firm in the market would be much smaller, with a market share of about 15 percent. Together, the top two firms would have almost three quarters of the market. If the dominant firms added more TV stations to their holdings, which would be allowed under the FCC approach, the situation would become even more dangerous.

Lancaster

Current Status: As shown in Exhibit 1, the HHI for each individual media outlet indicates a highly concentrated market. The combined media market is highly concentrated as well. Exhibit 2 shows the largest four firms have a combined market share of 90 percent to 100 percent, making them all tight oligopolies. When we combine all of the media outlets into a combined media market, we find that the overall market is highly concentrated and a tight oligopoly.

Impact of Mergers: As shown in Exhibit 3, under both of the scenarios considered, allowing cross-ownership in this market would have a large impact, with the HHI rising from about 2700 to a range of 3600 to 4700, an increase of 1000 - 2000 points.

The four firm concentration ratio increases from 84 to 89 percent. The leading firm's market share would rise from just under 45 percent to 56 - 68 percent if cross-ownership were allowed. The second ranked firm in the market would be much smaller, with a market share of about 10 to 20 percent. Together, the top two firms would have almost three quarters of the market. If the dominant firms added more TV stations to their holdings, which would be allowed under the FCC approach, the situation would become even more dangerous.

Burlington

Current Status: As shown in Exhibit 1, the HHI for each individual media outlet indicates a highly concentrated market. The combined media market is highly concentrated as well. Exhibit 2 shows the largest four firms have a combined market share of 90 percent to 100 percent, making them all tight oligopolies. When we combine all of the media outlets into a combined media market, we find that the overall market is highly concentrated and a tight oligopoly.

Impact of Mergers: As shown in Exhibit 3, under both of the scenarios considered, allowing cross-ownership in this market would have a large impact, with the HHI rising from about 1800 to about 3000, an increase of 1000 points.

The four firm concentration ratio increases from 75 to 85 percent. The leading firm's market share would rise from just under 34 percent to 45 - 50 percent if cross-ownership were allowed. The second ranked firm in the market would be much smaller, with a market share of about 25 to 30 percent. Together, the top two firms would have almost three quarters of the market. If the dominant firms added more TV stations to their holdings, which would be allowed under the FCC approach, the situation would become even more dangerous.

Myrtle Beach

Current Status: As shown in Exhibit 1, the HHI for each individual media outlet indicates a highly concentrated market. The combined media market is highly concentrated as well. Exhibit 2 shows the largest four firms have a combined market share of 90 percent to 100 percent, making them all tight oligopolies. When we combine all of the media outlets into a combined media market, we find that the overall market is highly concentrated and a tight oligopoly.

Impact of Mergers: As shown in Exhibit 2, under both of the scenarios considered, allowing cross-ownership in this market would have a large impact, with the HHI rising from about 3200 to a range of 4200 to 5800, an increase of 1000 - 2600 points.

The four firm concentration ratio is and would remain about 90 percent. The leading firm's market share would rise from just under half the market to 59 – 76 percent if cross-ownership were allowed. The second ranked firm in the market would be much smaller, with a market share less than half the size of the dominant firm. Together, the top two firms would have almost over four-fifths of the market.

Terre Haute

Current Status: As shown in Exhibit 1, the HHI for each individual media outlet indicates a highly concentrated market. The combined media market is highly concentrated as well. Exhibit 2 shows the largest four firms have a combined market share of 99 percent to 100 percent, making them all tight oligopolies. When we combine all of the media outlets into a combined media market, we find that the overall market is highly concentrated and a tight oligopoly.

Impact of Mergers: As shown in Exhibit 2, under both of the scenarios considered, allowing cross-ownership in this market would have a large impact, with the HHI rising from about 1900 to around 3500, an increase of 1600 points.

The four firm concentration ratio would rise from about 80 percent to about 90 percent. The leading firm's market share would rise just over 30 percent to around 50 percent, if cross-ownership were allowed. The second ranked firm in the market would be much smaller, with a market share less than half the size of the dominant firm. Together, the top two firms would have almost over three-quarters of the market.

Charlottesville

Current Status: As shown in Exhibit 1, the HHI for each individual media outlet indicates a highly concentrated market. The combined media market is highly concentrated as well. Exhibit 2 shows the largest four firms have a combined market share of 98 percent to 100 percent, making them all tight oligopolies. When we combine all of the media outlets into a combined media market, we find that the overall market is highly concentrated and a tight oligopoly.

Impact of Mergers: Cross-ownership mergers would not be allowed.

Altoona

Current Status: As shown in Exhibits 1 and 2, Altoona is highly concentrated in each of the individual media and across the entire media market. Four firm concentration ratios are 100 percent for each medium and the overall market is over 90 percent. A single firm dominates the newspaper market.

Impact of Mergers: Because of the dominant position of the newspaper and two dominant television stations, any single merger violates the *Guidelines* by a wide margin. In both merger scenarios, the single combination of the dominant newspaper with a TV station yields an increase in the HHI of over 1500 points. Mergers would result in a market that would be dominated by a single entity with a market share greater than 50 percent. The number two firm would be half the size of the leading newspaper-TV combination.

CONCLUSION

Mergers between newspapers and TV stations in the same market are front and center in the ongoing media ownership proceeding at the Federal Communications Commission for several reasons.

- Television and newspapers are the two most important sources of local news and information by far.
- The ban on such mergers was the longest standing of the rules that the Commission is considering.
- The Commission proposed the most radical change in this rule – allowing newspaper-TV combinations in virtually every city in America.
- In rejecting the Commission's cross-media limits, the Court devoted a great deal of attention to the Commission's faulty reasoning and flawed analysis of media markets.

This paper has shown that mergers between newspapers and TV stations in the same market pose a grave threat to democratic discourse.

- In antitrust terms, these mergers result in increases in market concentration that raise significant competitive concerns and are likely to create or enhance market power.
- In terms of the Communications Act and First Amendment jurisprudence, the newspaper-TV combinations that result dominate the local market raising concerns about undue economic concentration and inordinate influence over public opinion.

Historical evidence and logic suggest that many of the mergers analyzed in scenarios considered would take place. Policymakers and the public need to be aware of these dire consequences should the ban on newspaper-TV combinations be lifted.

STUDY 25: THE IMPACT OF EASING THE LIMITS ON THE IMPACT OF MULTIPLE STATION OWNERSHIP ON MEDIA MARKETS

MARK COOPER

ABSTRACT

In the previous study, *The Impact of Lifting the Newspaper-TV Cross-Ownership Ban*, we focused on the changes in media market concentration that would likely result from FCC rule changes that permit such cross-ownership relationships. The results were clear: Markets are already very concentrated and the lifting of the cross-ownership ban would drastically increase this level of concentration, leading to outcomes that are diametric to the purposes of the Communications Act. However, the FCC's actions in 2003 lead to the obvious conclusion that the Commission's removal of the cross-ownership ban would not be the only measure of media market deregulation taken. In the 2003 *Order*, the FCC also relaxed limitations on TV-TV mergers.

This study looks at the top ten TV markets and four medium-sized TV markets and projects changes in media market concentrations stemming from varying potential FCC rule-change scenarios. The analysis is complex, but there is a consistent theme among the results: most markets are already highly concentrated, and the lifting of the cross-ownership ban in concert with relaxation on limits of TV-TV mergers would dramatically increase media market concentration, resulting in a potentially devastating loss in diversity of media voices. This analysis reinforces the case against relaxing the cross-ownership ban and urges extreme caution when it comes to relaxing the limits on multiple station ownership.

INTRODUCTION

The previous analyses have included only newspaper-television cross ownership mergers. The FCC also relaxed the limitation on TV-TV mergers. Its order would have allowed a single owner to hold three licenses in large markets and it expanded the number of markets in which owners would be allowed to hold two licenses. However, at the same time, it continued to ban mergers between two stations ranked in the top four, based on audience shares.

It is also not clear how the Commission should define the market for purposes of evaluating the effects of TV-TV mergers. Although the *Sinclair* court criticized the FCC's decision for not treating voices consistently, it did not say the FCC could not make the case that TV-TV mergers should be considered in the context of the television market only.

As a result, the analysis of the impact of TV-TV mergers becomes quite complex, depending on what one assumes about the policies that will govern the mergers and the market context in which it is viewed. There are three variables – the status of newspaper-TV cross-ownership, the status of the top 4-exclusion, and the market perspective.

Exhibit 1 shows this complex analysis for the top ten markets and four middle sized markets whose Designated Market Areas rank between roughly 40 and 100 (out of a total of 210), which were analyzed in detail in the discussion of newspaper-TV cross-ownership. It includes two TV merger scenarios that parallel the newspaper-TV scenarios – 1+1 and 1+2. In the 1+1 scenario, the top TV station is assumed to merge with the largest available TV

EXHIBIT 1:
STATUS OF TV-TV MERGERS

CITY	COMBINED MARKET								TELEVISION MARKET			
	Top-4 Exclusion											
	With				Without							
	Newspaper-TV				Newspaper-TV				Top 4 Exclusion			
	With more		Without more		With more		Without more		With		Without	
	1st	2nd	1st	2nd	1st	2nd	1st	2nd	1st	2nd	1st	2nd
New York*												
1+1 Scenario	V	V	V	NV	V	V	V	V	V	V	V	V
1+2 Scenario	V	V	V	V	V	V	V	V	V	V	V	V
Los Angeles*												
1+1 Scenario	V	V	V	NV	V	V	V	V	V	V	V	V
1+2 Scenario	V	V	V	V	V	V	V	V	V	V	V	V
Chicago*												
1+1 Scenario	V	V	V	V	V	V	V	V	V	V	V	V
1+2 Scenario	V	V	V	V	V	V	V	V	V	V	V	V
Philadelphia												
1+1 Scenario	V	V	V	NV	V	V	V	V	V	V	V	V
1+2 Scenario	V	V	V	NV	V	V	V	V	V	V	V	V
San Francisco												
1+1 Scenario	V	V	NV	NV	V	V	V	V	V	V	V	V
1+2 Scenario	V	V	NV	NV	V	V	V	V	V	V	V	V

V= Violates *Merger Guidelines*, NV= Does not violate *Merger Guidelines*, *= Existing newspaper-TV combination

EXHIBIT 1: CONTINUED

CITY	COMBINED MARKET Top-4 Exclusion								TELEVISION MARKET			
	With				Without							
	Newspaper-TV				Newspaper-TV				Top 4 Exclusion			
	With more		Without more		With more		Without more		With		Without	
	1st	2nd	1st	2nd	1st	2nd	1st	2nd	1st	2nd	1st	2nd
Boston												
1+1 Scenario	V	V	NV	NV	V	V	V	V	V	V	V	V
1+2 Scenario	V	V	NV	NV	V	V	V	V	V	V	V	V
Dallas*												
1+1 Scenario	V	V	V	NV	V	V	V	V	V	V	V	V
1+2 Scenario	V	V	V	NV	V	V	V	V	V	V	V	V
Washington D.C.												
1+1 Scenario	V	V	NV	NV	V	V	V	V	V	V	V	V
1+2 Scenario	V	V	NV	NV	V	V	V	V	V	V	V	V
Atlanta*												
1+1 Scenario	V	V	V	NV	V	V	V	V	V	V	V	V
1+2 Scenario	V	V	V	NV	V	V	V	V	V	V	V	V
Detroit												
1+1 Scenario	V	V	NV	NV	V	V	V	V	V	V	V	V
1+2 Scenario	V	V	NV	NV	V	V	V	V	V	V	V	V

V= Violates *Merger Guidelines*, NV= Does not violate *Merger Guidelines*, *= Existing newspaper-TV combination

EXHIBIT 1: CONTINUED

CITY	COMBINED MARKET								TELEVISION MARKET			
	Top-4 Exclusion											
	With				Without							
	Newspaper-TV				Newspaper-TV				Top 4 Exclusion			
	With more		Without more		With more		Without more		With		Without	
	1st	2nd	1st	2nd	1st	2nd	1st	2nd	1st	2nd	1st	2nd
Kansas City												
1+1 Scenario	V	NV	V	NV	V	V	V	V	V	V	V	V
1+2 Scenario	NV	V	NV	V	V	V	V	V	V	V	V	V
Birmingham												
1+1 Scenario	V	NV	V	NV	V	V	V	V	V	V	V	V
1+2 Scenario	NV	V	NV	V	V	V	V	V	V	V	V	V
Norfolk												
1+1 Scenario	V	NV	NV	NV	NV	NV	V	V	V	V	V	V
1+2 Scenario	NV	V	NV	NV	NV	NV	V	V	V	V	V	V
Burlington												
1+1 Scenario	V	NV	V	NV	V	V	V	V	V	V	V	V
1+2 Scenario	V	NV	V	NV	V	V	V	V	V	V	V	V

V= Violates *Merger Guidelines*, NV= Does not violate *Merger Guidelines*, *= Existing newspaper-TV combination

station. In the case where top-4 mergers are banned, this would be the fifth ranked TV station. In the case where there is no ban on top-4 mergers, this would be the second ranked TV station. The next largest, unmerged TV station is assumed to merge with the second largest available TV station. In the case where top-4 mergers are banned, this would be a merger between the second and sixth ranked TV stations. In the case of where there is no top-4 exclusion, this would be a merger between the number three and number four stations. Note that in half the FCC sample cities the top-4 exclusion means no mergers would be permitted. In these markets, which are extremely concentrated, if the top-4 exclusion were lifted the impact of the mergers would be severe.

RESULTS

The results are complex, but broad conclusions can be drawn. If the TV market view is taken, these mergers uniformly violate the *Merger Guidelines.* If cross-ownership mergers take place and then these mergers take place, they overwhelmingly violate the *Merger Guidelines.* The top-4 exclusion prevents many mergers that would violate the *Merger Guidelines.* This is particularly the case for the smaller markets. As markets become smaller, the number of TV stations declines and the markets become much more concentrated. Under the top-4 exclusion the available TV stations have very small market shares.

Exhibit 2 shows three examples of magnitude of the impact under various scenarios. We have chosen two from the top ten DMAs and two from DMAs 90-100. We have including included one of the FCC sample cities in each. In the top ten, we have analyzed Boston since it currently has no cross-ownership situation and exhibited the smallest effects of TV-TV mergers under some scenarios.

EXHIBIT 2:

EFFECTS OF TV-TV MERGERS ON THE BOSTON MARKET

CITY & MERGER SCENARIOS		COMBINED MARKET TV POLICY SCENARIOS				TELEVISION MARKET TV POLICY SCENARIOS			
		Before	XO merger only	XO+ TV w-top four X	XO+ TV w/o-top four X	Before	TV w-top four X	TV w/o-top four	
NEW YORK									
TV News-TvTV									
1+1 1+1	HHI	979	1793	2601	3266				
	4 FIRM	53	80	87	83				
1+2 1+2	HHI	979	1788	2371	3210				
	4 FIRM	53	80	83	83				
1+1 NO XO	HHI	979	Ban	1202	1491	1786	2676	3558	
	4 FIRM	53	Ban	61	68	77	95	95	
1+2 NO XO	HHI	979	Ban	1189	1390	1786	2674	3162	
	4 FIRM	53	Ban	60	68	77	95	95	
BOSTON									
TV News-TV									
1+1 1+1	HHI	1165	2108	2227	2982				
	4 FIRM	61	74	78	81				
1+2 1+2	HHI	1165	2005	2392	2827				
	4 FIRM	61	74	78	81				
1+1 NO XO	HHI	1165	Ban	1282	1550	2166	2604	4934	
	4 FIRM	61	Ban	65	73	77		84	95
1+2 NO XO	HHI	1165	Ban	1296	1517	2166	2321	4816	
	4 FIRM	61	Ban	65	73	77		84	94

EXHIBIT 2: Continued

CITY & MERGER SCENARIOS		COMBINED MARKET TV POLICY SCENARIOS Before	XO only	XO+ TV w-top four X	XO+ TV w/o-top four X	TELEVISION MARKET TV POLICY SCENARIOS Before	TV w-top four X	TV w/o-top four
BIRMINGHAM								
1+1 XO	HHI	1991	2887	3586	4423			
	4 FIRM	70	80	90	90			
1+2 XO	HHI	1991	2847	3127	3912			
	4 FIRM	70	80	88	88			
1+1 NO XO	HHI	1913	Ban	2103	2310	1897	2703	3586
	4 FIRM	70	Ban	77	84	80	97	97
1+2 NO XO	HHI	1913	Ban	2097	2282	1897	2703	3540
	4 FIRM	75	Ban	77	84	80	97	97
BURLINGTON								
1+1 XO	HHI	1831	3260	3919	5777			
	4 FIRM	75	85	91	93			
1+2 XO	HHI	1831	2971	3531	3748			
	4 FIRM	75	85	91	93			
1+1 NO XO	HHI	1831	Ban	1921	2153	2792	3376	4864
	4 FIRM	75	Ban	78	80	78	84	100
1+2 NO XO	HHI	1831	Ban	1878	2004	2792	3127	3901
	4 FIRM	75	Ban	78	80	78	84	100

The ban on cross-ownership and the ban on top-4 mergers keeps the combined market effects relatively small. In the TV market, however, even the top-4 Exclusion fails to prevent a significant increase in concentration. Newspaper-TV mergers have a much larger impact on concentration. Within the TV market, the effects are larger.

In the larger markets, with a ban on cross-ownership and a ban on top-4 TV mergers, the concentration ratios the combined market HHIs remain in the lower part of the concentrated range. However, the TV market becomes highly concentrated in both cases.

This analysis reinforces the case against relaxing the cross-ownership ban and urges extreme caution when it comes to relaxing the limits on multiple station ownership.